

The Great Collision Case.

E. B. WARD, ET AL.

OWNERS OF THE STEAMER ATLANTIC,

VS.

THE PROPRIETOR OGDENSBURGH,

AND

CHAMBERLIN & CRAWFORD,

HER OWNERS.

IN ADMIRALTY.

Tried and determined at Columbus, in the District of Ohio,

AT THE APRIL TERM U. S. DISTRICT COURT, A. D. 1853.

HON. HUMPHREY H. LEAVITT, JUDGE.

REPORTED BY F. D. KIMBALL, ESQ.,

FROM ORIGINAL MINUTES TAKEN ON THE TRIAL.

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1853.



UNITED STATES OF AMERICA, DISTRICT OF OHIO.

In District Court U. S., April Term, 1853.

EBER B. WARD, SAMUEL WARD, AND STEPHEN CLEMENT,

VS.

THE PROPPELLER OGDENSBURGH.

IN ADMIRALTY.

LIBEL FOR COLLISION.

1. PLEADINGS.

THE libel in this case was filed by the owners of the Steamboat Atlantic, against the Propeller Ogdensburgh, her tackle, &c., on the 11th of November, 1852.

On the part of the complainants, it is stated that the steamboat Atlantic, of the burthen of eight hundred tons, left the port of Buffalo on Thursday, the 19th day of August, 1852, in the evening, with a large load of passengers and freight, bound for Detroit.

That said steamer Atlantic, after leaving said port of Buffalo, proceeded steadily and by the usual and direct course across Lake Erie, on her said voyage, with all her signal lights burning and displayed as required by law; and while so proceeding, at about the hour of half-past two o'clock, on the morning of the following day, to wit, Friday, the 20th day of August aforesaid, and when said steamer was off Long Point, on the Canada shore, she was run into, with great force and violence, by the propeller Ogdensburgh, whereof Robert Richardson was master, then being on her way from Cleveland to the entrance of the Welland Canal; that the bow of said propeller struck the lar-

board side of said steamboat, at or near the forward larboard gangway, and broke through the guard and hull of said steamboat, so that she filled with water and sunk, and was wholly lost to the libellants. That before and at the time of said collision, the said propeller did not have burning, and properly displayed, the signal lights, in such case required by law ; that she was not then steering in the usual course from Cleveland to the entrance of the Welland Canal ; that when said propeller came within sight of the lights of said steamboat, which were clearly visible at least two miles, the persons navigating said propeller neither stopped her engine, nor slackened her speed, nor altered her course, nor took any other precaution to prevent or avoid a collision with said steamboat.

That the officers and crew navigating said steamboat, as soon as they perceived that said propeller was approaching said steamboat, put the wheel of said steamboat first "*a-port*," and then "*hard-a-port*," and turned the course of said steamboat to the right, and away from said propeller, as, in law, it was their duty to do, and made every effort to avoid a collision, but that the persons navigating said propeller, though they saw the lights of said steamboat at a great distance, and long before the collision, and in ample time to have prevented the same, did not put the wheel of said propeller "*a-port*," nor turn the course of said propeller to the right, and away from said steamboat, as they were bound to do, nor did they stop or slacken the engine of said propeller, nor, before said collision, did they display the lawful signal lights ; but, on the contrary, the said propeller was so improperly and unskillfully managed and navigated, that she ran directly and almost at right angles into and against the said steamboat, and that said collision was occasioned by the negligence, inattention and want of proper care, caution and skill, on the part of the officers and crew of said propeller. That libellants have sustained damages in the sum of one hundred thousand dollars, &c.

On the part of the claimants, Chamberlin & Crawford, it is stated that the propeller Ogdensburgh, a vessel of three hundred and fifty-three tons burthen, left the port of Cleveland, deeply laden, on the 10th day of August, A. D. 1852, at about twelve o'clock and twenty minutes, P. M. That she proceeded, by the way of Fairport, towards her port of destination, Ogdensburgh,

in the State of New York, which was to be reached through the Welland Canal, in Canada.

That somewhere about two o'clock the next morning, and when said propeller was steering on her proper course, N. E. by E., for the mouth of said Welland Canal, wind light from S. W., and weather somewhat hazy, the watch on her deck discovered a steamboat light from two to three points off propeller's starboard bow, supposed to be distant about three miles. That the propeller was kept on her course, running at a speed of about seven miles an hour, until her mate, who then had the watch, ascertained that "the light" was fast nearing him, when he gave the signal to "*slow*" the propeller. This was done. Very soon he discovered that "the light" was coming still nearer, when he gave the signal to "*stop*;" and then, finding the vessels likely to come in contact, he directed the engine to be reversed, and the propeller to be "*backed*." This was done with all proper dispatch, but in spite of all these precautionary measures on the part of said propeller, a collision ensued.

That the steamboat, if she had held her course S. W. by W., would have passed the propeller nearly a mile on her starboard quarter; but by putting her helm "a-port," her course was turned to the right, so as to bring her across the bows of the propeller.

That said steamboat was running with unabated speed, some fifteen miles an hour, when she fell with all her momentum, upon the stem of the propeller, which she wrenched out of place and left standing at an angle of ninety degrees with its true position, and, at the same time carried the propeller half round, as she ran on her course.

That the persons navigating said steamboat, so far from using the ordinary precautionary measures to prevent a collision, made no effort to check her speed either before or after the collision, but, with unparalleled recklessness, crowded her ahead, until the waters of the lake closed over her.

That the persons in charge of said propeller, from the moment they first discovered the light of said steamboat, to the time of the collision, conducted themselves and managed their vessel according to the most approved rules of Lake navigation, and in a manner that a due regard for the safety of both vessels required at their hands.

That after the collision, and so soon as he had taken suitable steps to prevent his vessel from sinking, the captain of the propeller made his way after the wounded steamer, and, in spite of the remonstrance of the captain of the latter, proceeded to take on board the drowning passengers and crew.

That said propeller had all her lights burning and properly displayed, as required by law.

That said collision was wholly owing to the fault, omission, neglect and unskillfulness of the master, officers and crew of said steamboat, in turning her from her true course across the path of said propeller, and in their culpable neglect to stop the steamer or slacken her speed, when such change of course was found to increase the hazard of a collision, by bringing her nearer to said propeller.

The claimants ask to have their answer taken as a cross-bill, and that the libellants may be decreed to pay them damages, &c.

MESSRS. LOTHROP, SWAYNE, WADE and NEWBURY appeared for Libellants.

MESSRS. SPALDING, STANBERRY, M'NETT and KIMBALL for Respondents.

Mr. Spalding, on the part of respondents, moved the court to dismiss the libel for misjoinder; or, that libellants be compelled to proceed against the vessel alone, or against the owners alone. He contended that a proceeding *in rem*, against the vessel, could not be joined with a proceeding *in personam*, against the owners; and cited 1st Conkling's Adm. Prac., 300 to 385; Benedict's Adm. Prac., 342; Rule 15, Supreme Court; 3d Haggard, 114; 1st Robinson, Jr., 154 and 385.

Lothrop, contra: Cited case of the Ann, 1st Mason; Citizens' Bank, vs. Nantucket Steamboat Co., 2d Story's Reports, 57; 5th Howard, 441; Benedict, Sec. 387, 396 and 397; and commented generally upon cases cited on the other side.

H. Stanberry replied, and contended—1st. That to seize the vessel and arrest the person of the owner at the same time, is contrary to the analogies of the law. The property and person cannot both be seized to answer to an action.

2d. The rules of the Supreme Court are not permissive, but mandatory.

3d. At Common Law, the party could have his choice of three remedies; one against the master, one against the owners, and another against the ship. (1st Robinson, Jr., 385; 2d Story, 57.) The rules now, only permit a joinder in one case, that of the ship and master. (2d Woodbury & Minot, 92.)

The question was taken under advisement by the Court, and the trial proceeded.

The libellants gave in evidence, a certified copy of the enrollment and license of the Atlantic.

E. W. BRIGHAM, called and sworn. Resides at Conneaut; occupation, a mariner. Has sailed in all capacities, on all the lakes except Lake Superior. Has been master of a sail vessel; has been on steam vessels as wheelsman, and is now mate of the propeller Ogdensburgh. Was on the Atlantic at time of collision, as a passenger. Collision occurred on the morning of Aug. 20th, 1852. Went aboard at Buffalo, evening of 19th; left Buffalo sometime between 9 and 11, cannot recollect exactly. Steered by the compass S. W. by W. $\frac{3}{4}$ W. from Buffalo. Went below after she got outside; was in the saloon; came on deck about twelve o'clock—on the promenade deck; was part of the time in the pilot house, and part of the time on deck, until collision. Nothing occurred until about two o'clock; was then about two or three miles above Long Point, and about the same distance from shore. There was a lighthouse on Long Point; we were that distance from lighthouse. Saw light when steamer passed; were from three-fourths to one mile from it. After passing the Point, her course was altered $\frac{1}{2}$ point west. His attention was drawn to two white lights. Heard second mate tell wheelsman to "*port.*" Mate's name was James Carney. Saw the lights after he heard the order; looked around and saw them, at same time heard the order. Mate Carney said to wheelsman, "Put the wheel '*a-port,*' there is a light ahead." Thought they were lights of a sail vessel; they were globe lamps, such as sail vessels use. Noticed their bearing; it was $\frac{1}{2}$ to $\frac{3}{4}$ points over larboard bow of steamer. Wheel was put "*a-port.*" Went out on deck, from the pilot house, before the wheel was put *a-port*. Saw the vessels were nearing each other; the order was given by Carney to put the wheel "*hard*

a-port." Thought it a sail vessel going to the southward. It was a still, smoky night—no wind. Lights about one mile off when first seen. Went into pilot house and helped put wheel *hard a-port*. Looked out the door, saw lights still nearer. In a short time discovered it was a propeller; saw her hull; was within a short distance then. Had not then seen any other lights on the propeller. Don't know whether he could have seen colored lights, when he first saw her, if there were any. Was nothing between him and propeller. There might have been colored lights, and witness not have seen them; thinks he should have seen them if there were any, but don't know. Heard engine bell of propeller; she was within once or twice her length of the steamer. Before witness got out of pilot house, they came together; propeller's bow struck the Atlantic a little aft of her forward gangway. (Witness here showed the position of the vessels at the time of collision, by models prepared for that purpose.) Propeller went through Atlantic's guards, and into her hull, six or seven feet. The propeller bounded back very nearly clear of the steamer. Had seen no colored lights up to this time on the propeller. The Atlantic obeyed her helm, and was swinging to starboard, when the order was given to "*port hard.*" Went below and looked at breach. Saw water coming in fast. Thinks steamer ran from one-half to three-fourths of a mile. Orders were given to keep her N. by W.; that would take her to land. Don't know what effect it would have had if propeller had *ported* her helm, when Atlantic *ported* hers. If she had done so when lights were first seen, there would have been no collision. Thinks the Ogdensburgh can turn round in running $\frac{1}{4}$ mile. She turns easiest to starboard—would clear the Atlantic, at two or three lengths off, if her helm was *a-port* and the Atlantic lying still, but could not with the Atlantic coming down towards her. At the time we saw the hull of propeller, backing the Atlantic's engine would not have avoided the collision. The steamer was then close to her, and under full headway. If both vessels had been stopped when lights of propeller were first seen, there would have been no collision. Cannot tell whether propeller was moving or not, at time of collision; thought at the time she was moving. The lantern here shown, was the one he found on the Ogdensburgh this spring; there was a crack in one of the

glasses; the wind blowed through and affected it a very little. If the steamer made a light on her starboard side, she should keep her course; if on the larboard, should put her helm *a-port*. Had lately been from Gravelly Bay to Cleveland. The course to Ashtabula would be near the middle of the lake, a little nearest south shore, west of Long Point; east of peninsula, nearest north shore. Going from Gravelly Bay to Ashtabula, the nearest point to Long Point light, would be ten or twelve miles off. Would go within two miles in going to Cleveland. Running from Cleveland down shore to Ashtabula, and from a point eight miles off Ashtabula to Gravelly Bay, would run within two or three miles of Long Point light.

Cross-examined. Did not go to bed at all. Staid in saloon until about twelve o'clock. Had not known much of Carney, the second mate of the Atlantic, until the trip before. Had seen him frequently in Buffalo. Went on deck to take the air. Had no acquaintances except Carney there. Part of the time was on deck, part of the time in pilot house. His attention was first attracted to the Ogdensburgh, by hearing the mate say, "Port your helm, there is a light ahead." The Atlantic had time to swing to the right some, before witness saw the lights. Looked out of pilot house window to see the lights; went on deck then. It was half a minute, as near as he could judge, after the order was given to port the helm, before the order to "*hard a-port*." Hard a-port, means to put the helm a-port as quick as possible. To port wheel, it must be turned once, or until vessel commences swinging; to *hard port*, it must turn twice and one-half times over. Helped put wheel hard a-port; had seen the two lights previously. Took about one minute to put it hard a-port, as near as witness can judge. Then turned round to go out of pilot house; had got to the door, but had not time to get out before collision occurred. Should think it was not more than a minute and a half, from the giving of the order to "port," before the collision took place. (The witness here placed small models of the two vessels on the chart so as to represent their courses and position, as sworn to, the propeller being made over steamer's larboard bow.) As the models are now, if the steamer *ported* and then *hard ported* her helm, there could be no collision; the propeller would pass under the stern of the steamer. If both vessels had kept their original courses, the

steamer would have gone $\frac{1}{2}$ a mile off, under the stern of the propeller. Thinks the steamer ran fifteen miles an hour at her best speed. Did not hear Carney say they were a little behind time. Carney said, on seeing the lights, "There is a sail vessel standing to the southward." If it had been, she would have gone under the steamer's stern. If the propeller was on the steamer's starboard instead of her larboard bow, and both had kept their courses, there could be no collision, but porting the helm of steamer would bring it about, especially if she was two and a half points over the starboard bow. If witness had had charge of steamer, he would have checked her speed. It was not checked at all, until she run under, so that the water checked her.

Mr. Lothrop interposing—"On that point, gentlemen, we admit that the steamer was not checked, at all."

Cross-examination resumed. Did not see propeller's signal lights until he saw them from mast-head of steamer, after collision. Climbed the mast when she was sinking, and remained there until taken off by a small boat. Saw the colored lights of the propeller ten or fifteen minutes before she got to the wreck. Saw a red, and green light, and two white lights; the white lights were at the crosstrees. (To the Court.) Can give no reason why he did not see colored lights before the collision, except the haze which reached twenty-five or thirty feet above the water.

Witness meant by saying steamer "bounded back," that the vessels came apart after the collision. Noticed that steamer turned propeller round, part way on the course of the steamer. If the propeller had been at rest, and the steamer had struck her in that way, don't think it would make much difference; would have stove her in the same way. It was between the order to "port," and the one to "hard a-port," that the mate said he thought it a sail vessel, going south. Witness is now mate of the Ogdensburgh; went on board of her on the 15th of March. Was in Capt. Ward's employ about half a month after the collision, on the upper lakes. Witness rung the bell of the steamer, after the collision. Saw Capt. Petty, of the Atlantic, on the upper deck, after the collision. He was already on the propeller when witness got there. Witness was mate of the steamer Detroit, when in the employ of Ward.

Re-examined by Compl't. The lights did not bear at any time

across the starboard bow. Looked out as soon as he could, after he heard the mate speak about the lights. Supposed the orders of the mate were obeyed. Most sail vessels carry red and green lights, but never show but one at a time; on the starboard tack, they present a green light; on the larboard tack a red one.

JAMES CARNEY, called and sworn. Was second mate of the Atlantic at the time of collision. It was his third summer on board of her. Was running the north shore route, between Buffalo and Detroit, that season. Left Buffalo on Monday and Thursday evenings. It was our regular day from Buffalo. Left Buffalo at nine o'clock in the evening. It was his watch on deck from Buffalo to Long Point. Steered S. W. by W. after he got out of Buffalo. It might be fifteen minutes before we changed our course after getting out. It took sometimes half an hour before witness got up to take charge of the deck. The course given was the compass course. Passed several vessels, and some propellers. Saw Long Point light from the mast-head, half an hour before he made it from the deck. It was hazy, so he could not see it. When he made the light, thought it was too near, and hauled off half a point; continued this course until he got just past the light, may be a mile, more or less. Passed the light from $\frac{3}{4}$ to a mile distant, not over a mile. Then ran S. W. by W. again. Went into the pilot house, stood looking ahead. The model of the pilot house, here shown, is about right; a little more window. Mast did not obstruct view from window. Windows were down, that is, they were opened. Had a clear view all round from his position, with his head out of the window. Made a light pretty near ahead, a little over our larboard bow. Looked at the compass and made light $\frac{1}{2}$ to $\frac{3}{4}$ of a point over the larboard bow. Asked the man at the wheel if he saw the light; he said "no." Mr. Berry was at the wheel. Then looked at our signal lights, to see if they were burning; they were right. Could see none on the vessel ahead. Saw two white lights, and took it to be a sail vessel, standing down the lake, that is, standing to the eastward. Then told man at the helm to put his wheel a-port. Saw the light approaching us fast; ran on to the top of the pilot house. Saw under those lights something, but could not make out what it was. Then told wheelsman to put his wheel hard a-port; he

did so. Had his hand on the telegraph to stop her at this time. Then saw it was a propeller—saw there were two lights, and could see quite plainly. Saw it was no use to stop her, as our bows had lapped hers. Saw no colored lights. Thought if she had her wheel a-port, and we kept ours so, we might pass her, or receive only a glancing blow. Soon after she struck, or, about the time of the collision, heard a small bell ring; took it to be the engine bell of the propeller. Struck us about the middle of the forward gangway, as near as he can tell. Knocked witness off the pilot house; cut through steamer very nearly to the main hatch; breach extended below the water's edge. In falling, caught in the fore rigging. Ordered wheelsman to run to land; went below to examine injury; found every thing piled up there. After he found the hole, returned up stairs to promenade deck; saw Mr. Blodget, first mate, at the head of the stairs; he told witness to go below and see if she was making water. Went into the steerage, tried to raise the scuttle to go into the hold; could not do it. On returning, found the stairway crowded with passengers; broke through a window and got out on deck; saw she was sinking. First mate ordered him to go and list her to the starboard, to raise the breach in her side above water. Listed her down to her guards, but did not effect anything. Went on promenade deck again; she was settling fast. She went but little farther, when her bows went under, and the water put out her fires. Don't think she ran to exceed half a mile. At the time they left off listing her over, promenade deck had sunk under water. Cannot say whether there was a man at the wheel or not, during this time. Engine had stopped. Left the wreck about 4 o'clock in the morning. The steamer was then sunk, except her top-mast and a portion of her promenade deck. Have never seen her since. Made no soundings at that time. Have been a seaman about seventeen years. The Atlantic carried a signal light, (red and green.) It was attached to her mast about fifteen feet above the promenade deck, just above the pilot house. She had two white globe lights, suspended beneath the forward promenade deck, and several other lights, all around her decks. Lights in the cabin were burning. Had a full crew at the time—Captain, first and second mate, three wheelsmen, eight deck hands, one watchman, one decksweep, two engineers, a greaser, and usually, six

firemen. Did not see the light of propeller at any time, on our starboard bow. Steamer was obeying her helm, and swinging to the right, at the time of the collision.

Cross-examination. Thinks he has never said he passed Long Point light two miles off. May have said so at Buffalo, at a meeting there; but was not under oath then. Thinks he made same statement then, as now, as to the distance. Did not get to Long Point as soon as he expected; made the light from the mast-head. It is a British light. Cannot tell how far it was off when he went up the mast. Could easily see it, ten or fifteen miles off, from the deck, in a clear night; that night, could not see it from the deck, over two miles. Thinks he did not see it sooner than that. Were on a track much frequented by vessels. Were going at our usual rate. The ordinary speed of the Atlantic required seventeen or eighteen hours, from Buffalo to Detroit. Gave orders to keep off shore, when he made light from the mast-head; gave that order from the deck; walked around on promenade deck awhile, until abreast of the light, then went down to see what time it was. Time-piece in the engine room; judges it was fifty feet from pilot house. Went back to forward deck, stood there a minute or two. There is a door on each side of the pilot house; went into it on the larboard side; found wheelsman and another man in there. Had seen him before that evening. The man was standing abaft the wheel. Witness went in, in front of the wheel, and stood there, at the centre window, right behind the mast. Binnacle was right in front of him; stood partly over it. Usually stand at that place. It is about as proper a place as he knows of, for a lookout. Run on to the hurricane deck afterwards, to see better; can see farther from there. When first made light, thought it a sail vessel standing to the southward; looked at compass, and made where the light was; man at wheel said he did not see it; ordered the helm a-port; saw it approached fast; it was just at that time he ran on to the top of pilot house. It was before giving the other order. Had his hand on telegraph; put it on as soon as he got up there; gave order to "*hard a-port*;" did not ring to stop, because her bows had then lapped the propeller. Put his hand on the telegraph, because he saw that if there was time to back, it was proper to do so.

(Witness here arranged the models on the chart, to represent

the course of the vessels at the time of collision, according to his understanding.)

If the vessels are running as represented on the chart, the propeller on the larboard bow three-fourths of a point N. E. by E. and the steamer going S. W. by W. without changing their courses, steamer must go north of the propeller; if both keep their courses they would not come together, there would be no collision. If propeller keeps her course and steamer ports her helm, the latter will swing still further to the north and go wider off from the propeller. Seeing propeller two and one-half points over steamer's starboard bow and both keeping on their courses, there would be no collision. If propeller keeps her course and steamer puts her helm a-starboard, there will be no collision, she must port her helm and run across the bows of the propeller to produce one. The lights kept in same position but neared us fast. If it had been a sailing vessel standing S. by E. porting our helm would have opened the light at once. If when he saw the lights he had stopped the engine of the Atlantic, there would have been no collision. Could stop her in going twice or three times her length, may be in one-eighth of a mile. If he had stopped within one half a mile cannot tell whether or not there would have been a collision. It is the duty of a steamer to look for a signal light when she discerns a vessel approaching. If she makes no signal light it is her duty to go to the right of the vessel if she is dead ahead. If she ports her helm and the lights still close in, she should stop and back. It was his duty if he did not see the signal lights and the light was closing in, to stop and back, but witness thought it a sail vessel. If you cannot ascertain another vessel's course exactly, best way is to keep your own course awhile; vessels three miles apart and running two points varient, would pass at least one-fourth mile apart. The duty of the officer of the deck is to take entire charge of the vessel. No signal was given engineer to stop. Witness was knocked to larboard by collision. If propeller was two points off the starboard bow of steamer, porting the steamer's helm would have a tendency to bring on a collision. Met the 1st mate at the head of the stairs. When he got out of steerage went into engine room. Went once to steerage and once to main deck. Forty feet down to engine room. Then went to listing. Rolled over most anything to list

with; rolled over several barrels, some baggage and trunks; was pretty busy. At her ordinary speed would take her but a few minutes to go four miles. Thinks she only went half a mile. Then went to boats to get them ready. Did not see Capt. Petty driving passengers back. Went with deck hands and turned over boats, then went and found another boat, then went to ring the bell; found a man there, then climbed the mast when water came over the pilot house. Does not know when Capt. Petty left; found him on propeller when he got there. First shipped on the Atlantic in June, 1850, as wheelsman, continued that season and 1851. Shipped as 2d mate in March, 1852. This was his first experience as an officer of the deck. Second mate gets more pay than wheelsman. Duty of watchman is to look out for fire and thieves, not to look out for other vessels.

Re-examined. Was below only a moment before seeing the lights. Suppose we saw light as soon as it hove in sight. Was not very particular about calling the other watch at Long Point; usually called it there or a little above that point.

MORRIS BERRY. Was wheelsman on the Atlantic at the time of collision. Has been a sailor five years. Had been on the Atlantic about two weeks. Had been on her the spring before. Went to the wheel about 12 o'clock. Was steering S. W. by W. Kept her on that course until we made Long Point light, then kept her off one-fourth of a point, which made her course S. W. by W., three-fourths W. Second mate spoke of the light before witness saw it, looked and saw it. It bore three-fourths of a point over our larboard bow. Mate told witness to port the wheel and open the light. Saw the light before the course was changed. Put wheel a-port. They saw a couple of white lights up on the mast; supposed it a sail vessel. Kept his eyes on the lights; saw no others. Second mate then went up on pilot house; lights were getting nearer and the mate ordered wheel "hard a-port;" obeyed the order. Could not at this time tell what it was, and not until she got near enough for our lights to shine on her decks. Did not go down to see where she struck us. It was near the forward gangway, bows on. Witness remained at the wheel. Orders were then given to keep her for the land. Did so. Left the wheel when she stopped running, not before. Cannot tell how far she run before stopping; not a great ways. Her bows went down a great deal

quicker than the stern. Saw no colored lights on propeller until the time she was coming back to us after the collision. When she struck heard some kind of bell ring. At the time of collision steamer was minding her helm and swinging round.

Cross-examined. Steamer was swinging all the time from the time of getting the order to "*port.*" Rolled wheel over twice when ordered to "*port hard.*" Was on the Atlantic the year before. Had been on the Atlantic that spring as wheelsman for about a month. Left because he did not want to stay. Went back because he wanted to. Cannot tell how fast the steamer was going; she had on a good head of steam. There was a stranger in the pilot house that evening. He did not talk with him; did not hear him talk with the mate; did not see him go on deck with mate. The lights looked as if they presented a front view. Thinks it a minute or so from the time he saw the lights until the vessels came together. Saw them soon after mate asked if witness saw the light ahead. It was 10 or 15 minutes after they had passed Long Point light when mate spoke to him. Looked through the window behind the mast to see the lights; stood on the larboard side of the wheel; had two compasses. Stood so that he looked at one of them; lights bore one-half or three-fourths point on larboard bow. Can't tell whether one-half or three-fourths point. Boat was not swinging then. Don't know as he turned wheel alone, another man helped him. Don't know what the speed of the boat was. Opened lights some, about up to one point. Kept opening all the time and kept it open all the time until she struck. Could not see propeller's hull when he first saw the lights. Supposed it a sail vessel running to Buffalo, and supposed that by porting helm the steamer would run under her stern. (To the court.) There was more than ordinary difficulty in seeing a vessel that night; it was smoky 25 or 30 feet high from the water. Second mate was on pilot house at the time of collision. Did not put helm *hard a-port* before he went there. Second mate ordered witness to run for the land. Ported wheel to run her for the land. Could not steer her much; had not way enough. Run about W. N. W. Don't know which way she was heading when she went down. Went on the hurricane deck; staid on the arches awhile, then went up the smoke pipe. Went up the *outside* of the pipe. Did not see Capt. Petty and Mr. Blodget leave.

Gave his deposition last winter in Detroit in this case at the instance of Mr. Ward. Said in that deposition that he got orders to port *hard* after the mate got on pilot house. Did say in that deposition he recognized propeller by sparks from her chimney before that order was given. Do not recollect how long he said it was after seeing the lights before collision.

CHARLES C. BLODGETT, sworn and examined. Was first mate of the Atlantic at the time of collision. Has been over twelve years a sailor, and all the time on the lakes; has been on both steam and sail vessels—six years on steam vessels. Had served three seasons on the Atlantic. Had been second mate 2 years, first mate only that season. Left that evening on the regular trip from Buffalo, a few minutes after nine. She was a passenger boat. Witness turned in $\frac{1}{2}$ to $\frac{3}{4}$ of an hour after leaving Buffalo, with his pantaloons on. His berth was on the starboard side, first room in the cabin abaft the pilot house. Was awakened by the collision. Went out of his room; could see nothing on the starboard side, nor ahead; passed round to the larboard side, and saw the propeller, which was heading then nearly at right angles with the broadside of steamer. Saw two small and dim lights at the mast-head of the propeller; saw no colored lights; paid particular attention. Discovered where she struck us; passed around; met the second mate at the head of the stairs; told him to go below and ascertain if she was making water. Witness went down stairs, and ascertained the place where she was struck; water was running into her pretty fast; there was a clear breach. Got back on deck soon as he could; told the wheelsman to keep her N. by W., and told second mate to trim her to starboard; went and helped do it; did this to bring the cut out of water, if possible; it did no good. Went forward, and as he came back through the cabin, felt her lurch back to port, which was caused by her filling with water forward so fast. When witness got out of the cabin, her main deck forward was under water. The wheels made but very few revolutions after she was struck. Did not run to exceed half a mile. There was no way of keeping the water out, that he knows of. She went down very fast then, until nearly all under water. It was about daylight, before the propeller left the wreck. Was at the place a few days after; she is about two miles from land. The water is 27 fathoms deep where she

lies ; it is nearly $3\frac{1}{2}$ miles west of Long Point. Took her bearings from the light, by the compass of the small boat which he went there in ; bore about S. W. by W. $\frac{3}{4}$ W. from the lighthouse. Capt. McBride had been her commander the two previous seasons. She had been in service nearly all the time ; was a very good sea boat ; has been in her in all kinds of weather, and she always acted right. Had every thing necessary in the way of equipments. Had a full complement of men. (Enumerated them, the same as by former witness.) Carney is a very good seaman, competent to discharge the duties of a second mate. It was a very still night, somewhat smoky, lake very smooth. Her average speed was between fourteen and fifteen miles an hour. The Atlantic carried a large signal lamp, red on larboard, green on starboard side. It was carried on the spar above the pilot house, and was there when he left the deck. Carried two other lights, under the promenade deck, and sundry lights in the cabin. Has known Berry, the wheelsman, two years or more. He is perfectly competent to act in that capacity. The general usage in passing, is, to turn to the right ; to put their wheels a-port. This applies also to sailing vessels. If he should make the light of a steam vessel on the larboard bow, he could see her red light, and she would see his, and there would be no need of changing the courses. If meeting nearly ahead, it would be his duty to port his helm.

Cross-examination. (A drawing representing the position and courses of the two vessels, three miles apart, steamer $2\frac{1}{2}$ points over starboard bow of the propeller, was here exhibited to the witness.)

In this position, if the vessels do not alter their courses, they will not touch each other ; should think they would pass a mile apart. (Another drawing, representing propeller $\frac{3}{4}$ of a point over steamer's larboard bow, and one mile apart, submitted.) If both vessels keep their courses, there will be no collision. If the steamer puts her helm first a-port, and then hard a-port, the propeller keeping her course, there will be no collision ; they would go still farther apart. In the first position, the propeller keeping her course, the steamer must port her helm, to bring about a collision. If he saw a steamer coming on the larboard side, showing a green light, would not change the course. It

is not necessary to change the course always ; it depends on the position of the meeting vessels. When witness got into the after cabin, after collision, the lights were burning ; lights in the gangway were also burning. Went aft, then went to trim ship, and after that, went straight through the cabin on to the promenade deck, then up the hurricane deck to the pilot house ; then returned to the promenade deck and sounded ; let all the line out, and found no bottom. Found perfect confusion among the passengers ; they were gathered around the boats. Turned the boats over, on the deck ; got one of them over the side ; the passengers jumped in and overturned it. The other was served the same way. It was so dark he could not recognize a man four feet off. Witness got hold of the third boat and got it ready ; when the steamer sunk, it floated ; passengers got in, and it floated off. Witness swam to it, and remained in it until he hailed the propeller, who sent her boat to them. Witness got into propeller's boat ; then they shoved the life-boat alongside the propeller, and went to picking up those in the water. Stopped and went to propeller before he went out in propeller's boat. The man in the propeller's boat that came to us, said he was mate of the propeller. Witness hailed the propeller. There was something asked from the propeller, as to who was in the boat. Witness replied, "Capt. Petty is here, and is hurt badly, and the boat is full ;" wanted them to come and help us. Capt. Petty could sit up, and move about some ; not very badly hurt. Did not say, "Capt. Petty is here, save him." Was engaged after he got in the propeller's boat, in picking up passengers, wherever he could find them. Took the oar and sculled to the wreck ; picked up three loads of passengers. Witness heard no orders to put out the lights in the cabin, and does not know when they were put out. Saw no one on the hurricane deck, with a handspike or bludgeon. The captain is in the starboard watch, and Carney was in that watch. Recollects the trial trip of the Golden Gate, and that the Atlantic came very nearly in collision with her. Witness was on deck, and in command at the time ; but it was Carney's watch. Thinks he was on deck the night before the collision, until they got below Long Point, on the way to Buffalo ; after that, the second mate had the watch. There was no danger of a collision, while he was on deck that night.

Re-examined. The upper deck was covered with passengers, and they were screeching and yelling tremendously. Went over the skylight and found Capt. Petty lying there, with both hands on his head. He said, "My God—my head." Put him up against the braces, and tried to have him get into the boat; he appeared to be stunned, and would do nothing. Went away, and came back again; found him gone. Went to find a float for him, but could not find one. In looking for it, witness accidentally slipped off the side of the boat; swam to the wheel-house; called to Capt. Petty; he answered; swam to him, and found him on the scuttle that went over the pantry; then saw a boat, swam to that, and then returned and picked up Captain Petty and took him to the propeller. Swam twenty to twenty-five rods to the boat. Paid no respect to persons; picked up several, all we could see. Paddled back to the captain, with a piece of board we found in the boat.

GEORGE DANA, sworn and examined. Witness was porter on the Atlantic at the time of the collision. It was his duty to take care of the lights, baggage, &c.; also, to trim and light the lamps. The Atlantic that night had her signal light on the mast, two lights under the promenade deck, and lights in the cabin. There were globe lamps opposite to each gangway. Witness looked after the lamps, and saw that they were lighted that night. Between ten and eleven, turned down part of the lights in the cabin. Put two or three small glass lamps in the cabin to give light in case the others burned out. Examined the lights between twelve and one o'clock, and they were all right. Was in the barber's shop blacking boots, at the time of the collision. There were some lights burning in the cabin, at the time of the collision. Some were broken by the passengers hitting them with tables, settees, &c., which they were carrying out, after the collision. Might be knocked down by jars from the deck above. Saw no lights turned down after the collision, and heard no orders to do so. There were nine different lamps in the cabin.

Cross-examined. Cannot tell how many lights were burning at the time of the collision. Thinks he did go through the cabin after the collision and find it in darkness. One way to get on to the hurricane deck, was through the cabin. Would not be positive the cabin was entirely dark. Did not see any one with a handspike, keeping the passengers off the hurricane deck.

Witness jumped overboard, and swam to the binnacle, which was afloat.

Re-examined. Was picked up by Mr. Carney, in a small boat. Each stateroom had a life-preserver stool, and there were several life-lounges in different parts of the boat.

CAPT. ESTABROOK, sworn and examined. Is a seaman, and has been for sixteen years—thirteen upon the lakes; two years as master of a propeller, and four as master of a steamer. The custom of the lakes is, for vessels approaching each other from opposite directions, to port their helms, and pass each other to the right. If he should make the red light of a steam vessel in passing, it would indicate that she was passing to the right, and all he would have to do, would be to keep the light open, and pass to the right. If he made a vessel dead ahead, or so nearly so as to require more room, it would be his duty to put his helm a-port, and give it more room. If he made a vessel's light on the larboard bow, if running on parallel lines, would keep his course, watching the light closely, and if it changed towards him, would put his wheel a-port. The line from Cleveland to Gravelly Bay will intersect the line from Buffalo to Point au Pelee. If a steamboat on her course from Buffalo to Point au Pelee, makes a light on her larboard bow, the point of intersection of the two courses would be astern of the steamboat, or south of her. A direct line from Ashtabula harbor to Gravelly Bay, would go within six or eight miles of Long Point.

MR. BLODGETT re-called. When they got into Erie, got the steamboat Clinton and went to the wreck. Found a spar four feet out of water; knew it to be the spar of the Atlantic, by the ball on the top. It went down before we got to it. There was a variation of one and one-eighth of a point in the compass, caused by the metal in the boat. Allowing for this variation, the Atlantic was actually heading W. by S. $\frac{3}{4}$ S.

CAPT. ESTABROOK, resumed. The point of intersection, if neither vessel has varied from her true course, would be some thirty miles west of Gravelly Bay. A vessel at the nearest place off Long Point, would be about S. E. from the point. If these vessels should be running on their true courses, and the propeller should make the steamer's red light, two or two and one-half points over her starboard bow, at a distance of three

miles, it would be her duty to keep to the right of the red light, by putting her wheel a-port. To "open a light," is to increase the angle at which it is seen. If he should make one, or two white lights, nearly ahead, or one or two points off the larboard bow, he would go to the right. If the vessels came together as demonstrated by the models, with the steamer's helm a-port, the propeller should have put her helm a-port, one-half mile off, and given a good berth. If the propeller's helm had been ported one-half minute before the collision, there would have been but a slight collision. A propeller will turn quicker than a steamer. It is usual for the second mate to have the charge, during his watch. The proper place for the officer of the deck is forward, either in the pilot house, or on the promenade deck. Sometimes the pilot house is the best place, in a rainy or windy night; besides, it is higher than the promenade deck. The authority of the officer of the deck extends to the engineers' department.

Cross-examination. Would not get into the pilot house to secure himself from the inclemency of the weather, but for a better view. The pilot house is for the man at the wheel; passengers are excluded from it. The best place for a lookout in a still, smoky night, is to get up, so as to see over it. Does not help the view any, to have a covering over one's head. Must look out of different windows, to command a view of the whole horizon. It is not as high inside, as on the pilot house, or on the hurricane deck. There is no obstruction from the top of the pilot house. The examples he has given of sailing, are hypothetical; courses of vessels would not intersect, as laid on a chart, one time in a hundred.

Long Point light is a very good one, and it must be pretty thick, when it cannot be seen two miles off. Knows where the wreck lies; it is pretty broad off in the lake. If, when the steamer made the lights of the propeller, she ported, then hard ported her helm, and after the collision ran for land, she must be now much nearer land than when she first made the lights. If she now lies S. W. by W. $\frac{3}{4}$ W. three and one-half miles from Long Point light, and she ran four miles from the place of collision to her present place, the collision would have been some six miles out from land. If her helm was ported, and then hard ported, one minute before the collision, she must have been at

that time farther out, than when at the point of collision. She would run about one-fourth of a mile in one minute. There are circumstances, where vessels meeting, should keep their courses. If running on parallel courses, 2 or 3 points off, and one mile distant the steamer should make the propeller over her larboard bow, sailing on their courses and both keeping them, there would be no collision. If the steamer should port her helm it would carry her farther off, and there would be no need of the propeller porting hers. If there is uncertainty about the bearings of a light or an approaching vessel's course one ought to check down until he ascertained it. Should keep his course at first and if it still approaches and closes, should stop and ring the bell. If both stop and back there cannot be a collision. Thinks the Atlantic could not come to a full stop short of half a mile in still weather. Probably no place more frequented by vessels than the vicinity of Long Point light.

Capt. WILLOUGHBY. Has been a mariner fifteen years at sea and upon the lakes. Has been twelve years mate and master. Was master of the Atlantic in the fall of 1849. Is now master of the May Flower. Has seen the Atlantic frequently since he commanded her; she was a first-class steamer; equal to any for strength. Steamers generally run within from one to two miles of Long Point light. Knows where the Atlantic lies. Is almost directly in the usual track of steamers. We sometimes pass her a mile to the north and sometimes a mile to the south. Thinks she lies three miles from the light house; from two and one-half to three miles from land. The usage on the lake in 1852 was for vessels meeting to go to the right, to port their helms. If in running up along Long Point he should make a white light one or two points off his larboard bow, would put his helm a-port. If it was a sail vessel, should consider porting his helm sufficient. If he thought it a steam vessel, would get its bearings. If it approached, would slow the engine. Deemed it sufficient to port his helm, if he made a steamer on his larboard bow. Should present his red light to a vessel on his larboard bow, and it would indicate to the other vessel that she was in the right position on the left. The duty of the other vessel making his red light, would depend upon the course and distance. If vessels were meeting ahead, she should port her helm. If she made the light at so small an angle as to meet the other

vessel, she should increase that angle. If the propeller and Atlantic were both on their true courses, the lines would cross each other. If the steamer made the light of the Ogdensburgh on her larboard side, the propeller was south of the steamer and would see the steamer's red light. If he made more than one white light, would consider it a propeller. The steamer Atlantic was worth, as she run, about \$70,000. Never knew a vessel to be raised in such deep water.

(It was here agreed and announced to the court by the counsel for the respondent, that the value of the Atlantic might be considered as proven, at \$75,000.

It was also agreed and announced on the part of the libellants that respondent's answer should be considered as a cross bill; that the question of damages to the propeller should be considered and decided in this suit, and that the amount of such damage should be fixed at the sum of three thousand dollars, and it was so entered upon the journal of the court.)

Cross-examination. Can see Long Point twelve to fifteen miles in a clear night. In a smoky night it would require more than ordinary care in a look-out. There is no point except Point au Pelee channel more frequented by vessels than the vicinity of Long Point. It is a place requiring care and watchfulness. Witness commanded the Atlantic three or four months. She would run fourteen or fifteen miles an hour, in smooth water; don't think she could run 16 or 17 miles an hour. She carried from 30 to 35 inches of steam. If witness made a light on his larboard bow, would port his helm; if he made one on his starboard bow, would slow his engine and take the bearings of the light. If he distinguished two white lights, should consider it a lower laker, and should think it heading for the Welland canal. If he should make a vessel coming down the lake on the starboard bow of the steamer when going up, he would determine her position before he went further, if he had time, then would check the engine, and if necessary, stop; and if still necessary to prevent a collision, would back. If vessels were running on parallel lines, one half mile apart, laterally, they would pass without changing their courses and without a collision.

Capt. JOHN SHOOK, sworn and examined. Is a mariner. Has been master of a steamboat since 1836, with the exception of

two seasons. Steamers meeting each other on nearly the same course, should pass each other to the right. The course from ten miles off Ashtabula, would cross the route from Buffalo to Point au Pelee. If a steamer running from Buffalo to Pt. au Pelee, makes two white lights ahead, she should pass on the right. Simply a white light would indicate a sail vessel. If he should make the light on his larboard bow, would suppose it to be south of him. If the propeller under these circumstances made the red light of the steamer, it would show that her larboard bow was presented to the propeller, and it would be the duty of the propeller to keep it open and pass to the right, under the stern of the steamer. If the propeller passed the line of the steamer's course, she would see the green light of the steamer; if on the same line, would see both the green and red lights. If she was two and one-half points off the starboard bow of the steamer, he does not think she would see the steamer's red light. If she was steering across the steamer's bows two and one-half points northwardly, would see a red light and keep to the right under the stern of the steamer. She would lose the red light in running one-fourth mile. If sailing up the lake and a steam vessel was approaching him at nearly right angles, it would depend upon her distance whether she should alter her course. If she was steering at right angles with him, and had time enough to clear him, by porting her helm, she would have time enough also to pass his bows and clear him. If so near as to actually come in collision, unless it is done, should both port their helms. The proper place for an officer of the deck depends somewhat on the darkness of the night. Witness usually walks the forward promenade deck, as much as anywhere in pleasant weather. Frequently goes into the pilot house in a stormy night, if it is not too thick.

Cross-examination. If the propeller made the steamer's lights one mile distant, one-half to three-fourths point off her larboard bow, the propeller running N. E. by E., the steamer S. W. by W., would hardly think there could be a collision, if both kept their courses. If in that case the steamer ported her helm, it would carry her away from the propeller so there could not possibly be a collision. If the two vessels are as above stated, the propeller cannot make the red light of the steamer she must swing to starboard before it can be seen. Porting and

hard porting the steamer's helm, when going 15 miles an hour, would soon open her red light. She must be inevitably crossing the propeller's bows, when under these circumstances she shows her red light. It is always proper when it is smoky or hazy to get up above it to look out.

GEORGE R. GIVEN. Was acting as clerk of the Atlantic at the time of the collision. First knew of the collision by the concussion: remained on her until she sunk and until all of the passengers were taken off. He saw Long Point light fifteen minutes after the vessels came together: appeared to be about four miles distant. It was not perfectly plain, yet he could see it and make out that it was a light house. It was somewhat hazy but not foggy; was starlight overhead. Steamer had stopped at this time. Witness was asleep at the time of concussion. Thinks the steamer kept her motion about three minutes; cannot tell how far she went—not more than one-half mile. There were eight hundred dollars in the office, belonging to the boat, which were lost, with all her books and papers.

Cross-examined. There were four hundred thirty-six persons aboard the boat at the time of her loss.

Deposition of ALFRED BERRY read. Is by occupation an engineer. Was the 2d engineer of the Atlantic at the time of the collision. Saw the Ogdensburgh approaching, saw the sparks from her chimney and knew it to be a propeller. The fireman called to him to stop the engine but he did not have time to do it. If the engine had been stopped when the fireman called to him it would have made no difference. He saw only a white light from the propeller, and thought it was a star. It was the globe light at the propeller's cross-trees. Witness had charge of the engine at the time of the collision.

Deposition of NELSON WOODWARD read. Witness resides in Detroit, and is a mariner. Has served in various capacities, and is master of the propeller Princeton. The signal lights of a steamer are red and green. All steam vessels are required to carry them. If witness made a red light when very near would port his helm and pass to the right. Knows the propeller Ogdensburgh and has seen her run; she will run six or seven miles an hour; could turn in once or twice her length.

The depositions of JACOB L. WOLVERTON, R. L. MONTGOMERY, SILAS KENDRICK, S. S. NEWHALE and THOMAS C. SMITH, were

read and related to the qualities of the machinery of the Atlantic.

Depositions of THOMAS S. HUDSON and HIRAM J. JONES, were read, and related to the usage in passing lights, &c., and were the same as previous testimony.

Capt. J. R. HOWE, sworn. Has been a mariner 15 or 20 years. Has been mate and master 12 years, and master of a steam vessel the last four years. The general custom is for steam vessels meeting each other to pass to the right. If he should make a white light and no other, could not tell immediately what it was. Sail vessels before the wind show a white light. If he should make a white light a mile off, when going up the lake, off Long Point, would not consider it necessary to stop; would keep his course. The red light of a vessel indicates the larboard side, and it would be his duty to keep it open and leave it on the left. If two steam vessels were running, one 14 to 15 miles an hour, the other 6 or 8, nearly head on, they should both port their helms; would then be likely to run clear of each other if only one-half mile apart.

Cross-examination. It is not necessary to always pass to the right. If there is sufficient berth to pass without changing the course, should do so. If the courses of two vessels are one-half mile apart, on parallel lines, they cannot come together if they keep their courses. It is not the custom to change the course under such circumstances. If he made two white lights at the mast-head, would call it a lower lake propeller. No other vessels carry two white lights at the cross-trees. If in a misty night found the white lights three-fourths point off and closing on his larboard bow, would consider she was crossing his bows, and slow his engine. If the Atlantic made her light 2 or $2\frac{1}{2}$ points on her starboard bow, he would keep her on her course until he made that of the other vessel, would then port, slow or stop, as circumstances required.

If the propeller is on the starboard bow of the steamer running N. E. by E., and the steamer W. S. W. and both keep their course, they cannot touch each other. If the propeller keeps her course, the only way to produce a collision would be for the steamer to port her helm. If on the first course stated, with the propeller on the larboard bow of the steamer, porting

the steamer's helm would carry her entirely away from the propeller's course.

The libellants here rested their case.

TESTIMONY FOR THE DEFENCE.

Capt. ROBERT RICHARDSON, sworn and examined. Witness commanded the Propeller Ogdensburgh at the time of the collision. She left Cleveland a few minutes after 12 o'clock noon, on the 19th day of August, 1852, for Ogdensburgh. She was loaded so as to draw nine feet four or five inches forward, and eight feet nine inches aft, with fuel to carry her to Point Lucia. She had 340 to 350 tons of freight and fuel. Followed the land down until after dark. Did not steer any particular course. At dark were about abreast of Madison dock, thirteen miles east of Fairport, 16 to 17 west of Ashtabula, and about 6 to 8 miles from land; 8 miles when he first made Ashtabula. Then stood N. E. by E. This was at 8 o'clock, when the watches were changed there. It was his watch, and he did not leave the deck until half-past one; then went to bed, the vessel steering the same course. The lake was smooth, and the atmosphere smoky to the height of twenty-five or thirty feet. Propeller had two large-sized globe lamps at her cross-tress, a large signal lamp about six feet above the promenade deck over the pilot house, one lamp amidships, one in the gangway, three around the engine, and a skylight on the top of the hurricane deck, eighteen feet long, with a large lamp in that. His room was on the star-board side, there was a light there, one in the mate's room, and one in the engineer's room. He knows that the colored signal light and the lights at the cross-trees were burning when he went to bed. Is always particular about that. The signal lights were burning the next day at 10 o'clock, and one of those at the cross-trees. Saw them burning immediately after the collision. When he turned in, he left Mr. McNett, the first mate, on deck in charge of the vessel, and William Barnes at the wheel; Lewis Young, the second engineer, was at the engine, and one fireman at his post. When witness turned in, he told Mr. McNett he would make Long Point light about 2 o'clock. He generally ran in, to within about four miles of the light. There were no lights ahead when he turned in. Was awakened by the noise

made by the engine signal bells. They are worked from abaft the wheel-house, and run under one side of his room. He arose immediately ; got on one boot ; heard the steam of the Atlantic as he came to the door, and saw her through the window. She struck the propeller as he opened the door, and knocked him back. When he got out, he found her clear of the propeller ; and she had passed, so her stern was nearly opposite the bow of the propeller—a little ahead. The propeller was turned round, until she got to an angle, where she dropped clear of the steamer. Immediately got on to the hurricane deck, and made Long Point light, off our starboard quarter. The engine of the propeller was at this time at rest. The collision took out the stem of the propeller, from the top to the water line. It hung by a large splinter, and was turned over in the direction the Atlantic was running. The stanchions and plankshire were torn off down to the gangway. Below the water line the stem was entirely gone. The water was running in, and it was stopped by stuffing in bed clothes. Were probably engaged in this nearly half an hour. He went down between decks, then went on upper deck ; saw the Long Point light, and concluded to heave to. Saw the steamer's light, and thinking she was waiting to see what damage she had done us, started to go to her, to get her to take off our deck load. In fifteen minutes her light disappeared. He then thought she had gone on her course, and was about to turn back, when a passenger said, he could hear a halooing ; thought not, but immediately heard a general screaming and outcry. Went on, found the steamboat. She was sunk so the top of her smoke pipes, were only about four feet above water. She was heading W. and by S. one half S. up the lake. Picked up the first man forty rods from the steamer. There was a small boat ; some one called from it, thinks it was Mr. Blodget, to "stop and save us, it is Capt. Petty." Heard another man in the water : sent the mate to get him. On his way back he took Capt. Petty aboard ; sent the engineer for him, he came up where witness was standing. (The declarations of Capt. Petty were objected to by libellants' counsel, and excluded by the court.)

Witness then ran the propeller alongside the steamer, sixty or eighty feet of her hurricane deck was out of water. The propeller went to her, head on, inadvertently, which was occasioned by witness being talking with Capt. Petty. Did not dare receive

the passengers over the bow, on account of its damaged condition, and had to back off. Did so, and made fast to the steamer, got alongside, talked to the people, directed them how to come aboard, without a rush, and then took them all on to the propeller. Then sent a man back, to see if there were any left aboard her, found none. The boats had meanwhile picked up all that were still alive in the water. Then with the propeller made three circuits around her, to find any that might be left, and finally left her about sunrise, and ran for Erie. Thinks it took nearly twenty minutes, to run the propeller from the place of collision, to where the steamer lay.

Cross-examined. Long Point light was about three miles off when he saw it after the collision. The lights he saw on the steamer were white lights. She was to the starboard of the propeller. Ran very slow on the first start, in running to her. He did not get out of his room soon enough to see the breach in the steamer. Was awakened by the bell-wires, and the tramping of the mate overhead. He had on his vest and pantaloons at the time. May have been a mile from the steamer when her lights disappeared. The red glass in the signal light was not cracked at the time of the collision; it was done this spring, and has been replaced. Has been a mariner 20 years, and a master 13 years. Has had charge of all kinds of vessels except a square-rigged brig.

Re-examined. Mr. McNett, then first mate of the Ogdensburgh, now captain of the propeller Boston, owned by Chamberlin & Crawford, is a good sailor. Mr. Barnes is a competent wheelsman, had been on the Ogdensburgh one month previous to the collision.

Re-cross-examined. The signal lights had not been trimmed, after being lighted. The direct route from Ashtabula to Long Point, would take them within four miles of Long Point light. The propeller was run N. E. by E. until he retired.

Capt. SHOOK called and examined. Heard the testimony of Carney, the mate, and Berry, the wheelsman of the Atlantic, and their description of the weather. If the weather was as they have represented it, he would not have entrusted the steamer to any second mate, off Long Point, at that time.

Cross-examined. Speaks for himself individually. Does not know but some masters do so. There are mates who are competent to take charge of a vessel, when a light-house can be seen two or three miles.

Capt. DE GRASSE McNETT, sworn and examined. Witness was first mate of the Ogdensburgh, at the time of the collision. Has been a mariner 13 years; has sailed before the mast, as mate, and is now master. Shipped aboard the Ogdensburgh two months before the collision, as first mate. His watch commenced at half-past 12 o'clock. Thinks he first made a light, about two o'clock. Stood within about four feet of the signal light of the propeller, at the time, and knows it was burning. William Barnes was at the wheel. He is a competent wheelsman. Made a white light, two and one half points on our starboard bow, at about two and one half, or three miles distance. He was standing at the time by the pilot house; immediately jumped into the rigging, and went on to the pilot house, opened a scuttle over the compass, took the bearing of the light, and made it as before stated. Looked at the light two or three minutes, and thought it opened on our starboard bow a trifle. Did not observe how much it opened; after observing it that length of time, he rung the bell to slow the engine. When he first discovered the light, asked the man at the wheel if he saw the light; he replied that he did; ordered him to keep the propeller on her course. The light appeared to open four or five minutes; after that it did not open—then discovered that it was nearing him. Thinks it opened until it bore three and one half to four points, on the starboard bow of the propeller; it then appeared not to open any more, but to near him. He stood and looked at the light a minute, perhaps not so long, and then first saw her red light, immediately rung the bell, stopped and backed the engine. At this time, should judge the steamer was not more than four or five times her length off. The engine was slowed, stopped, and backed in obedience to the signals. The propeller was not going, to exceed three miles an hour, when the signal was given to stop. Her ordinary rate was about eight miles an hour. He saw her hull, at about three or three and one half times her length off. She was then coming stem on to us. Had not up to this time altered the course of the propeller. Was standing on the pilot house with the signal wires in his fingers. He then saw that a collision was

inevitable, and ordered the wheelsman to put the wheel hard "a-starboard." The effect of this would be, if there was time, and she minded her helm, to turn her head from the advancing steamer. She did not swing one half point, before the steamer struck us. She did not swing, because, she had no perceptible headway. It was the only thing that could be done. To have ported the wheel, would have swung the propeller bow on, and towards the steamer. If she had come directly stem on, she would probably have gone over us. Had a full view of the steamer; saw no men on her decks, and heard no bell, cry, or signal whatever. About the time he gave the order to starboard the wheel, he hallooed, "where the h—l are you going;" but received no answer. When she struck, she swung the propeller round, in her course. She swung clear, and went on up the lake, without stopping. She was going very fast at the time; the propeller had little or no headway. After the collision, immediately lowered the propeller's boat, and the bell was also rung. Capt. Richardson appeared on the hurricane deck, just after she swung clear of us. Had not got more than three or four rods, and ordered me to get a boat down, and see how much we were damaged. Found the stem was broken out, and the water making into her. Stopped up the leak with rags and clothing, as well as we could. Then started after the steamer. From not having heard any bell, and her not stopping, supposed she was uninjured. In a short time heard cries; cannot describe the sound; it was every body screaming, in terror and anguish. Cannot say how fast we went to the steamer; his mind was on something else. The first thing he saw, was the Atlantic's life-boat, four or five rods off; they hallooed; could not tell what they said. Then heard a man in the water calling——

Mr. SWAYNE here interposed an objection to the witness stating what any one said after the collision.

The Court decided that evidence of this nature, going to show want of skill in the officers of the steamer, or to contradict any fact proven by the libellants, might be given. If it did not do this, it must be excluded.

Examination resumed. There was a man in the water, between the Atlantic and her life-boat, crying out "give me a rope." Capt. Richardson ordered witness to go in a boat, and save him.

In going to get him, passed the Atlantic's life-boat, a man called out from the boat, "come here." Witness answered, "as soon as I save that man in the water." The man in the boat replied, "come here G—d d—n it, and save me first, I am Capt. PETTY of the Atlantic." Saved the man in the water, then went along side, took Capt. Petty by the arm, and helped him into the propeller's boat. A man calling himself the first mate, also got in. Capt. Petty then said, "don't let any body else get in here." Witness replied, that he would take part of them, and then their boat would tow easier. He then took part of them aboard. When they got to the propeller, asked one of them to take the boat and go to picking up passengers; they made no answer. Thought perhaps, they could none of them scull; asked "can any one scull?" Still received no answer. He then made the boat fast, and went aboard. Does not think any body else used her. Went and got off the propeller's large boat, and with Mr. Harris, the clerk of the propeller, went to picking up the drowning passengers. There were a great many calling and screaming. Heard one little child, tried to save it, but could not reach it before it sank. Saved all who were alive, who did not sink before we could reach them. The Atlantic's life-boat had a little water in it, when he took Capt. Petty out of it. It is hard to sink a life-boat; thinks it would sustain all that could get in, and hang on to it. Found four persons in the Atlantic's large boat, which was full of water, and took them off. The propeller went along side of the steamer, and took off all who were on her deck. The safest place on a sinking boat, is the hurricane deck. It would be the duty of the officers, to alarm the passengers; keep a light in the cabin, and help them up on the deck. There is a little bell, which means to "back hard." Rung that, immediately after the bell to back. There were backward revolutions of the wheel, before the collision, but cannot say how many. There was no forward motion of the propeller, after the collision, the wheel stopped. When he first saw the hull of the Atlantic, she appeared to be steering direct for the propeller lights. Made her all the time over the propeller's starboard bow, until she lapped us. There was a haze on the water, 20 to 30 feet high. Propeller's white lights were above the haze.

Cross-examined. The propeller's course was N. E. by E.

from off Ashtabula, cannot say what light he made on the propeller except it was white. Made it from 10 to 12 minutes before the collision. Went to the top of the pilot house first place he went to; remained there until after the collision. Did not perceive how far the propeller's bows penetrated the steamer. Has sailed on the Lady of the Lake two months as wheelsman. Has sailed on sail vessels as cook, sailor, 1st and 2d mate, and on all the lakes. Has served five years as mate. Did not give any order until about three minutes after he saw the light. Did not know what it was, but judged it was a steamer from the rapidity with which it neared us. Judged it to be bound up the lake. Did not make the red light under seven or eight minutes from the time he slowed the engine. Made at this time another white light; in the first place appeared like one. Was within four lengths when he made the red light. Has given his deposition, and was examined before a coroner's jury at Erie, Pa. Testified substantially the same here as there. Did not say at Erie as reported, that if he had put his helm apart five minutes before the collision it would not have occurred. Was asked if he had *backed the engine* five minutes sooner than he did, if the collision would have occurred, and answered that it would not probably, and that there would not have been one if we had staid in Cleveland. Did not testify then that he made the red light of the Atlantic two or three miles off. Cannot say he made a distinction as to the time of seeing the white and red lights, perhaps he did not, it was an exciting time then.

WILLIAM BARNES, called and sworn. Is 24 years old. Has been a sailor six years. Was on the Ogdensburgh at the time of the collision. Was his first trip on her. Had acted as wheelsman two seasons before. Came to the wheel at twelve o'clock that night. Saw the steamer's light about the time the mate spoke of it. It was two or two and a half points on our starboard bow. He took its bearing by the compass. Mr. McNett was standing beside the pilot house when he spoke of it; went immediately on to the hurricane deck, opened the scuttle and looked down on the compass. She was slowed after two or three minutes. Could tell that she was slowed by the feeling of the wheel, and by the signal wires, which go through the pilot house. Saw it was a steamer but a very short time before she struck us. Looked as though she was coming right on to the pilot house. Saw the

two white lights on her promenade deck, and part of her smoke-pipes. Did not see her red light until she was close on; did not see her green light at all. There was not much headway on the propeller. Was ordered to put the wheel hard starboard, just after we backed. Had not got the wheel turned over into one or two spokes when she struck us; she did not mind her helm to exceed one-half point. Best place to see is outside the pilot house, has often noticed that the binnacle light hindered his seeing. Saw no one on the hurricane deck of the steamer before the collision. Saw somebody on the main deck after the collision. Knows the signal lights were burning; saw them reflect on the mate as he came out with his coat just before he discovered the steamer's light.

Cross-examined. Am now wheelsman on the Boston propeller with Mr. McNett. Has not talked the matter over much with him. Has some lately. Could see the hull of the steamer plain when he saw her red light. His eyes caught a view of the steamer before they did of the red light. Testified in Erie before the coroner's jury. Heard Capt. Richardson instruct the mate to slow the engine if there was any doubt about passing other vessels. Changed the course by the mate's orders soon after taking the wheel from E. N. E. to N. E. by E.

BYRON C. HARRIS, sworn and examined. Is 21 years of age. Was clerk of the propeller at the time of the collision; first went on her the first season of 1852. His room was nearly amidships, on the larboard side. Turned in about 11 o'clock. The door of his room opens out upon the deck. Was out on the deck nearly the whole evening, observed that the colored signal lights and the lights at the cross-trees were burning. Was awakened by the noise made by the signal wires in slowing the engine. Went to the door of his room, it was locked, got it unlocked, stepped out and looked all around on the larboard side of the propeller and could see nothing. Thinks five minutes intervened in doing this. He then went back, put on his pantaloons and socks, heard the signal to back and back quick, came out, locked his door and then heard the crash of the collision; run around forward. The steamer had gone clear of the propeller; he thought the propeller was sinking; went through the cabin and alarmed the passengers, then went to the safe and got out what money he had in it. Looked and saw Long Point

light on the starboard quarter. Then saw the steamer's light. Capt Richardson said to me, "I think the steamer is standing still, we will go and get her to take off part of our deck load." Started and run from 10 to 15 minutes, when the steamer's lights suddenly disappeared. Witness went into the large boat with Mr. McNett and helped to pick up the passengers. He heard the last part of the exclamation of some one from the steamer's boat "to come and save me, I am captain of the Atlantic," or something to that effect.

Cross-examined. The bell wires run right under my berth on the larboard side. The cabin is some 16 to 18 feet wide.

Mr. GIVEN, clerk of the Atlantic, called. He did not state to Mr. Walbridge after the collision, that after being awakened by the collision he got up, but hearing no alarm went to bed again and had got nearly asleep when he was alarmed by the porter.

Hon. DAVID S. WALBRIDGE, called and sworn. Witness resides in Kalamazoo, Michigan. Was a passenger on the Atlantic at the time of the collision. He went aboard of her at Buffalo. Took a state-room in which he put his baggage, but slept on a lounge in the cabin, the first one aft of the companion way. Was dressed as usual, except his boots. Did not see or hear anything until the crash of the collision; was awake at the time. Immediately got up, took out his watch and saw it lacked only two or three minutes of two o'clock. It was light in the cabin, and he could see the state rooms were smashed in forward. He heard no alarm, signal-bell or order from any one whatever. Got out of the cabin and went forward near the pilot house to find some one of whom he could enquire what the danger was. Found no one from whom he could obtain the information. Then he started to go below; first went back into the cabin, not much confusion there, a few enquiring what the trouble was, but not able to ascertain. Went below and forward so that he could look down into the furnaces. Saw that the water was running in pretty smartly. One of the deck hands was then looking down at the water coming in, who seemed very much terrified. While witness stood looking down, a man whom he took for an officer, came running, partly dressed, the deck hand pointed below and said to him, "look there, sir," he looked and immediately run back. Saw that the engine was still going. Went above and into the cabin and found it was totally dark. Went in and got

the lounge he had slept on. Knew where to find that ; got it on deck, but thought it would become saturated with water and would not float him. Then tried to find a life-preserver stool. Did not dare to go, in the total darkness, to his own state room, it was so far ; opened three or four state room doors and found them occupied ; thought he had time to get a stool without robbing his neighbors ; finally found two in an unoccupied room and carried them on to the deck. A man helped him up on to the hurricane deck ; the engine was still going and the boat going ahead some but sinking forward. Saw a boat go past astern. swamped, with some men clinging to it. The steamer was still moving ; noticed she swung to the right. He went aft as the water rose, got on the after hurricane deck and remained there until he was taken off by the propeller. He saw the propeller as soon as he got astern on the hurricane deck ; thinks she was astern over the larboard quarter. The only one he saw that had the appearance of an officer from the time of the collision until he was taken off, was the person who looked down into the furnaces. Was looking to see her careen from the time of the collision ; supposed she would be listed over, did list a little to larboard at one time, but not to starboard. Heard no bell until he got up on to the upper deck. He saw the clerk of the Atlantic, Mr. Given, soon after he got on to the propeller, he said "that when the collision occurred he was asleep in his room on a lounge, that he got up and went on deck, and hearing no alarm, went back and laid down, and had got almost asleep when the porter came in with two life preservers and told him the boat was sinking and he had better take one of them and go overboard." He said that he did so, and said, "I have the life-preserver on my arm yet," and showed it to me.

Cross-examination waived.

Deposition of LEWIS YOUNG read. Is 25 years of age, by occupation an engineer. Was on the Ogdensburgh at the time of the collision as second engineer ; had been on her since the 7th of April previous. Had charge of the engine at the time of the collision. His watch commenced at 12 o'clock. The engine of the propeller is right abreast of the after gangway. Fifteen or twenty minutes before the collision he looked through the gangway and saw a light coming which appeared to be a good way off, on the starboard bow. Turned back and went into the engine

room; took the oil can, went below and oiled round the engine. Came back on deck and put the oil can in the engine room. Turned to go out of the engine room to see if he could see the light again. Had not got one foot out when the bell rung to slow the engine. Turned back and slowed it. Threw off the "cut off" and pulled out the "pin," ready to back if there was any need of it. By that time the fireman came on deck; he looked out on the larboard side and saw nothing, came back on the starboard side, saw the steamer and hallooed to witness to back her hard. At the same time the bell rung to back the engine and back it hard, and he did so. The fireman again hallooed to back her harder, "if he did not we were all goners." At the same time he saw the fireman run away from his place aft. He raised up his head and saw through the starboard gangway the steamer coming. She appeared to him to be coming for the 'midships of the propeller, head on. She struck our bows and knocked the starting bar out of his hands, and then threw him upon the engine against the cylinder. By not holding the starting bar the engine stopped on a half centre. Thinks some six or eight minutes elapsed between the signals "to slow" and "to back." She must have made thirty-five or forty back revolutions before the collision. The signal lights were all burning at the time of the collision.

Cross-examination. Took him, he would think, about fifteen minutes to oil the engine, went on to the bow of the boat before going to the engine, when called, and saw the signal lights burning. Has been second engineer nearly four years.

Deposition of JOHN DELANY read. Was on the Ogdensburgh as fireman. His watch commenced at 12 o'clock. Came out of the hold, and was rubbing himself off with a towel. Heard the bell to slow. He passed to the larboard side, and looked out of the gangway, and saw nothing; then went to the starboard side, and saw a steamer coming. Thought she would strike our midships, and halooed to the engineer to back, halooed to him the second time to back hard, "or we were all goners." He went away from the starboard gangway, and went to the larboard gangway, and took hold of the stanchions. Saw the steamboat's bows passing the propeller's bows; just then she struck us. He thought the steamboat was going to strike the

propeller, was the reason he went from the starboard to the larboard gangway.

Cross-examination. Could see the steamer's hull when at the starboard gangway. Thinks she was about a mile off.

Deposition of HENRY McPHERSON. Was second mate of the Ogdensburgh at the time of the collision. His watch commenced at 8 o'clock, and lasted until 12. Kept the propeller N. E. by E. until a few minutes before twelve, when Capt. Richardson told him to have her steered E. N. E. Left her steering that course when he left the deck. The atmosphere was a little smoky when he went to bed. Knows her signal lights and lights at the cross-trees were burning when he went to bed. The first he knew of the steamer was the collision, which threw him out of his berth. Got up as soon as he could, and looked out. Saw the steamboat a few rods ahead, going away apparently, heard her wheels going; went forward, and found the propeller's bows knocked to pieces, and her stem knocked out of her. Ascertained the extent of the damage, and stopped up the leak as well as they could, with coats and blankets. Went to the pumps to see if she leaked; kept the pumps going, and found some water in her. Saw Long Point light on her starboard quarter. Mr. Harris, the clerk, asked me what light it was. Then they went to the steamer; her lights disappeared. The next thing we heard was the screaming of the passengers on the steamer. We went out to them, and commenced taking them out of the water. Saw a small boat just off our bow. A man hailed them, saying he was Capt. Petty, and wanted us to come and get him. Saw no one go for him. Afterwards saw him on the propeller. He came along forward, when witness was hauling a man out of the water. He spoke to Capt. Richardson, and said, "He was Capt. Petty of that steamboat, for God's sake don't go near her, there are six hundred passengers on board, and they will sink you." Capt. Petty was standing on the promenade deck, about two feet from me, and Capt. Richardson was standing on the top of the hurricane deck, near the pilot house. They went alongside the steamer, and got the passengers all off; went round her two or three times, and then started for Erie.

Cross-examination. Has been 13 years a seaman. Thinks Long Point light five or six miles off, when they discovered it.

Deposition of EBENEZER WAIT read. Is 28 years old. Is an

engineer. Was first engineer of the Ogdensburgh, at the time of the collision. The first he knew of the collision, he was thrown by it from his berth, upon the floor. Was informed by the second engineer that a steamer had run into them. He went down to the engine, and found it at rest. Went and examined the propeller, and found the water coming into her. They started after the steamer, were from twenty minutes to half an hour getting to her. Before they got to her, saw a boat, and heard a voice hail them, and say, "I am Capt. Petty of the steamboat Atlantic, come and fetch me aboard." Capt. Richardson ordered witness to take Capt. Petty to him as soon as he got aboard, as he might be some help to him. He helped Capt. Petty out of the boat, and as he was going forward, he said to witness, "Are you badly damaged?" Witness replied, "We are." He then said, "You had better go right to the shore, as quick as possible, for the Atlantic is full of passengers, and they will sink you immediately." When he got forward, he said the same to Capt. Richardson. Capt. Richardson replied, "He should go alongside, if they did sink him;" or something to that effect. Witness gave orders to blow off the steam after the collision.

Cross-examined. The speed of the Ogdensburgh was about eight miles an hour. Thinks she could not be stopped and backed without being first slowed.

THOMAS McGRAIN's deposition read. Was steward on the Ogdensburgh. It was a part of his duty to see to the lights. On the night of the collision the signal lights and other lights were lit and burning. He lighted them about dark. They were all burning immediately after the collision, and continued to burn until after daylight. Noticed them particularly, because it was his duty to see to them.

Deposition of THOMAS QUAILE read. Relates to the building, worth and equipment of the Ogdensburgh.

Capt. B. C. TURNER called and sworn. He resides in Oswego, New York. Is a mariner. Has been the master of a vessel. Was a passenger on the steamer Atlantic at the time of the collision. Went on board at Buffalo. His state-room was on the starboard side, near the forward gangway. He was awakened by the collision. Were three persons in the state-room. One, his friend, Mr. Burch, the other he did not know. Mr. Burch

went out and came back, and said the boat was sinking; thought it was not, as no bell was rung. Dressed himself except his boots, and went out. There was a good deal of excitement. The engine was still running under a full head of steam. He went forward on the promenade deck, and saw the propeller's light over the larboard quarter; judged the steamer was heading up the lake, on her course, and that there was no danger. This was ten minutes after the collision. As he was going back into the cabin, he saw men pushing passengers to prevent them from getting upon the hurricane deck; were threatening them. Went into the cabin; soon heard a noise on the larboard quarter; looked and saw them launching a boat. The steamer was still in motion. Found she had sunk forward about to the guards. He procured a table, went on deck, and with his friend went into the water. The steamer was still in motion, and ran clear ahead of him. Soon after he saw a boat approaching; they hailed us, and wanted to know who we were. Made them no answer, but swam to the boat; there were but two in it, but there were several clinging to it. They took hold of the gunwale of the boat; one of the men in it, who was one of the Atlantic's crew, told us to let go, or he would beat our brains out. Expostulated with him, and finally showed him how to bail the boat with hats of witness and Burch, and then got into it. They saw two men in the water; one gave his name as "Luke," the other said his was "George." The men in charge of the boat saved Luke, who was one of the crew, but paid no attention to George, and he sank and drowned. While he was getting ready to go on deck, the lights in the cabin were put out. Heard some glass rattling. Knows the boat was not listed over, as some have said it was. He heard no orders given by any one, and no alarm by the officers. Thinks the boat run 20 minutes, and 3 miles after the collision.

Cross-examined. Did not know the officers, except Captain Petty. Saw the man that was in the boat, aboard the Sultana afterwards; he said he was a fireman, and dodged away. Supposed the persons driving the passengers back were officers. The water was up to the promenade deck when witness got off, and she was still in motion.

EDWARD H. REESE sworn. Resides in Cleveland. Is an engineer and builder of engines. Has been an engineer on first-

class steamers, more or less, for 12 years. Has been on the Erie, Illinois, Empire and several others. Is now the Government Inspector of engines for the Port of Cleveland. Has seen and knows the engine of both the Atlantic and Ogdensburgh. The Atlantic's engine was about one thousand horse-power; the boat of the capacity of 1,100 tons. The power of the steamer, in proportion to her tonnage, was about 6 or 8 times the greatest. The steamboat had every advantage, in backing, over the propeller. The screw of a propeller acts upon the principle of a wedge—it has to solidify the water before it acts. The wheels of a steamer act instantly. Thinks the steamer, if running 16 miles an hour, could be stopped in a little over twice her length, or about 600 feet. That is done almost invariably by steamers in running into Cleveland harbor. Slowing the propeller five minutes, and then backing her 30 to 35 revolutions of her wheel, and she would be still, or nearly so. When a steamer is running it rolls up a swell, where she is the widest, and also buries some; would probably be 14 or 15 inches lower when running than when at rest.

Capt. AUGUSTUS WALKER. Resides at Buffalo, is Inspector of steamboats, and Classifier of sailors, under the law of 1852. Has been 30 years a mariner, and 20 years a master on steamers on the lake. The usage is, in meeting directly ahead, to put the helms apart. He knows no other position where this rule applies. With the Atlantic running W. S. W., and the Ogdensburgh N. E. by E., the Ogdensburgh one half to three-quarters points off the steamer's larboard bow, if both vessels keep their courses, there can not be a collision. If the steamer puts the helm apart, it would carry her still further from the propeller. If on these courses, the Ogdensburgh is two and a half points on the steamer's starboard bow, and both keep their courses, a collision is impossible. If the propeller keeps her course, the only way in which a collision can be produced is, by the steamer's putting her helm apart. In such a night as the one described by the witnesses, there should be a good watch kept. It is not the proper place for a look-out on a dark night in the pilot house. If he should make a white light on his larboard bow, would keep his course long enough to ascertain its bearing, and what it was. If it closed on him, would slow his engine. Thinks the Atlantic should have been stopped, under the circumstances detailed by her offi-

cers. If boats got close together, should back as hard as he could. If the boats are within 1,000 feet of each other, and both back, thinks they can avoid a collision. If the propeller had lost her head way, and the steamer came in contact with her at full speed, thinks she would penetrate the steamer's side. Thinks the steamer should have been stopped immediately after the collision. The effect of going ahead would be to fill her faster than if at rest.

Cross-examination. If the propeller ran her whole width, to the keel of the steamer, the steamer would not stay above water five minutes. The engine would not operate long after the boilers were immersed in cold water, cannot tell how long. If the steamer was swinging, the concussion would be less. Thinks it would cause a breach notwithstanding she was swinging. Thinks in swinging, every point of the keel follows in the same arc of a circle. Should not run for land without stopping.

Capt. HARRISON HOWARD. Has been a mariner 25 years. Has commanded sail vessels principally, but steamers a short time. Has heard the evidence in this case. If he had been on the propeller, should in the first place have kept her course, and watched the steamer's lights. If the light neared him, should have slowed his engine, and still observed the bearings of the light. If it opened to four points, heading on, at four or five lengths off, would stop and back. If he had been on the steamer under the circumstances detailed, should have slowed, stopped and backed. If the propeller was on the steamer's larboard bow, as sworn to by witnesses for the libellants, the effect of porting, and hard porting her helm, would have carried her away from the propeller, so as to render a collision impossible. Should have known the two white lights at the mast head, indicated a lower lake propeller, and have judged it heading for the Welland Canal. The effect of running, after a breach is made, is to raise the water, and cause it to run in faster. The only way to save her, would be to stop and careen her over.

Cross-examined. If she was cut to the keelson, would run to the shore, would not suppose though, she could stay above water to exceed six minutes; probably not more than four. If he made only one white light, would take it for a sail vessel. The stern swings in turning outside the line of the bow of the boat. The least motion is at the bow in swinging.

Capt. TURNER recalled. He saw a broken state room, looked down and saw the outside was smashed, but the inside partition was not. Cannot say how far the propeller's bows penetrated.

Capt. LYMAN CASE, called and sworn. Resides in Erie Co., Ohio. Has been a mariner on the lakes 27 years. If, under the circumstances detailed by the witnesses, he had made the steamer's lights two and one-half points on the starboard bow, he would have kept his course, until he found whether it opened ahead. If meeting another vessel in a right line, he would port his helm. If the light did not open, would check his way; if after running four or five minutes he suddenly made the red light of the steamer, four or five points on his starboard bow, three or four lengths ahead, he would stop and back. Knows no rule that both vessels shall port their helms, when not meeting in a right line, except perhaps, when approaching at right angles. The propeller, under the circumstances, should not have altered her course. If he made two white lights at a vessel's cross trees, should take it for a lower lake propeller. If he made such lights $\frac{1}{2}$ to $\frac{3}{4}$ points on his larboard bow, would port a little; if they did not open, but closed, he would check his engine. If they still neared him, would stop. (The witness here placed the models so that the propeller would make the steamer's light, two and $\frac{1}{2}$ points on her larboard bow.) In this position, the propeller would be running nearly North, to the Canada shore. Port the steamer's helm now, and he knows no way there could be a collision.

Would not consider it safe, for the officer of the deck to remain long at a time in the pilot-house, on such a night as that of the collision. If you order a wheelsman to steer by a light, and keep it open a point or two, the result will be, you will come in contact with it. Thinks a vessel will sink sooner, if run after a breach is made in her. It is the duty of an officer to stop after a collision, to ascertain the damage, to ascertain if it can be remedied, and to learn the condition, and if necessary, aid the other vessel.

Cross-examined. If satisfied a vessel would sink, would run for the shore. If the breach extended to the keelson of a vessel, she would sink inevitably, and soon. If broken seven feet into her hull would sink, unless the breach was stopped up some way. Officers do look out from various parts of a vessel. Sail vessels

sometimes carry a white light on the fore rigging, and another on the jib boom, in bad weather. Sail vessels carry their lights low.

Capt. JOHN S. WARNER, called and sworn. Has been a mariner on the lakes since 1817, on all kinds of craft, and in all capacities. Has been a master since 1825. Vessels both port their helms when meeting head on, or very nearly so. This rule does not apply, when running diverse courses. If these vessels were running on the courses proven, one-half to three-fourth points diverse, at a mile distant, there would be no collision, if they keep their courses. If the steamer puts her helm a port, she will not come as near the propeller, as though she kept her course. If the steamer should be running two and $\frac{1}{2}$ points on the starboard bow of the propeller, she must port her helm to produce a collision, if the propeller keeps her course. He would check, stop and back, as stated by the last witness. It is not good seamanship for an officer to be in a pilot house in a smoky, hazy night. Would in his opinion be good cause for his dismissal.

If an officer simply went into the pilot house, to see where his vessel was going, would not consider it improper, but if "loafing" there, he would so consider it.

Capt. O. SALISBURY, sworn and examined. Has been twenty years a mariner. Resides in Conneaut, Ohio. Has been master of a steamer for several years, and now commands the steamer Diamond. Vessels should port their helms when meeting dead ahead. There is no other fixed rule; must be governed by circumstances. If he had made a white light two and one-half points on his starboard bow, would have kept his course and taken its bearings. If it closed in on him, would "slow," and if it got so near as to be dangerous, he would back. Should have done the same thing on the steamer. Such a night as that required a vigilant watch. It is no place to watch in the wheel-house. Should have stopped the steamer after the collision. Knows Mr. Blodget, the first mate of the Atlantic, thinks he came to witness to ship for the first time in 1844. Witness met the Atlantic the morning of the collision at one o'clock. Witness was coming up from Buffalo. Saw her 8 or 10 miles from Long Point. Was considerably south of the usual course. Passed so near he read her name by the reflection of the lights.

Cross-examined. Does not know what Blodget's qualifica-

tions as a sailor are. There is a suit pending between him and the Wards. Cannot say how far he saw the red light of the Atlantic on the night in question; saw her white lights three or four miles. Might perhaps see a red light that night one-half a mile. Did not take notice of her colored lights until nearly abreast her. Witness passed 6 to 8 miles abreast Long Point he judged. Red light of the Atlantic was not above the fog and haze.

JAMES R. CARRIER's deposition read. Witness resides in the city of New York. Waits on the table in a private boarding house. Was second pantryman on the steamer Atlantic in 1852, on Lake Erie. Was on board of her the evening of the 19th of August, 1852. It was in Buffalo. She left Buffalo for Detroit between nine and ten o'clock. Was awakened by the shock of the collision. Got out of bed as soon as he could, without stopping to put on any clothing. Did not even wait to take his watch from under his pillow, but rushed immediately up on deck. Went through the upper cabin into the pantry, which was on the larboard side; on the same side the Atlantic was struck. There had been no alarm given or bell rung at that time. Went forward to the place where she was struck; it was near the forward gangway. Stopped a few minutes there. Then the bell was rung very slowly and soft: it might have been tolled a great deal louder. He then ran into the pantry and up through the scuttle upon the hurricane deck. Immediately after he got on the hurricane deck he saw Captain Petty, with his coat and hat off. It appeared to witness he was just coming out of bed. Witness then ran on the larboard side, where some persons were getting ready the yawl boat. Got into it so as to have a seat when she was launched. Looked on the starboard side and saw Capt. Petty getting his life-boat ready, and his crew also; the first mate and others of his crew were there. Witness went over to that boat. Capt. Petty was saying to his crew in a *loud* and *mournful* voice, which scared witness, "come my bullies and save yourselves." There were passengers who rushed towards the boat besides the crew; on their doing so, Capt. Petty took a long piece of wood or a handspike in both hands and struck or crowded them off. They made a rope's end fast to the captain's life boat and launched her; on doing so she came bottom up in the water. There was no tackle for launching her. Did not hear Capt. Petty give any order in regard to the navigation of the boat after the collision.

Her speed was not stopped until the water stopped it by the sinking of her bows. Thinks the steamer run three or four miles before stopping. Has heard her officers say so. The cabin lamps were not burning when he got into the cabin. Capt. Petty, after the life boat was upset, got back again on the deck and ran up and down in an excited state of mind. Witness got on deck also, and went up to him. Saw something that appeared like a light or star. Asked the Captain if it was not the light of the propeller. He had hardly even spoken to me before, except when he wanted something, and he answered, "Yes, my son, I think it is." Did not see anything more of the captain until he was getting out of the boat aboard the propeller. Capt. Petty, Mr. Blodget, and part of the crew were about the first to leave the steamer. Heard the propeller's bell ring immediately after the collision.

THEODORE TITUS' deposition read. Is fifty eight years of age, and resides at Detroit. Was on the Atlantic as a passenger, at the time of the collision, with his son, Ellet H. Titus. Took a state-room together on the larboard side, abaft the wheel house. Witness awoke about ten minutes previous to the collision, and requested his son to open the window, as it was sultry and warm. His berth was over that of the witness. When the collision took place, witness said to his son, "we had better get up." "No, father," he replied, "all is right, no bell, and the engine in motion." Witness laid back in his berth, and in about a minute he said, "all is right—no bell—engine in motion, and I presume, it was nothing but a log got under the wheel house." We lay quiet for the space of two or three minutes after the collision. The first alarm of danger was some one running through the cabin, crying out, "the boat is sinking." Just at that time the bell tolled. This was the first time the bell was struck. His son got dressed first, he followed shortly after, with two stools, called "life preservers," and immediately went out to the hurricane deck. He thinks he was the fourth person on the deck. In about a minute the captain came there, after he had attempted to launch the life-boat. He knows that fact, because the captain said so. At, or about that time, the engine was stopped by the water, and the forward part of the boat was settling downward. His son in his hearing, asked the captain the depth of water: he replied, "the deepest in the lake." His son said, "Captain,

what would you advise." His answer was, "save yourselves." The captain then sprung up on the wheel house, and tried to wrench the trap door off its hinges. He could not do it. Himself and son then went down on the promenade deck. The water was on deck, near the gangway. The life preservers were of no use, and they saved themselves with a table, until taken aboard the propeller. Should judge the captain unfit for his position; he was not cool, nor collected, and made no provision whatever, for the safety of his passengers. He tried to launch the small boat, when the steamer was under full headway, and they were both swamped. About half a dozen of the crew got into the third boat, and paddled it away from the steamer with their hands.

The conduct of the captain and crew of the propeller, was manly, noble and generous, so far as it came under his observation. The engine of the steamer was not stopped or checked, until stopped by the water. When he got into the water, the propeller was a long way off from the steamer; could just see her light. Capt. Petty made no provision for the comfort of his passengers, when he got to Erie, but took the cars for Buffalo, and did not show himself to the passengers.

Cross-examined. His son has been employed on steamboats on the Mississippi. Am not acquainted with steamboat navigation, except as a passenger; has traveled on them a good deal. Very few of the passengers had left their rooms, when he got out of his state-room. Did not see but one man, a woman and child, until he got on the hurricane deck: helped them up. There the confusion was great. Saw the boat was sinking while up there. Was not there to exceed two minutes. When he came down, the water was about ankle deep, near the gangway. The bow pitched down forward, at an angle of 20 or 30 degrees. The passengers were jumping overboard, and treading each other under water. Thinks there were two hundred and fifty passengers lost, before the propeller came up.

JOHN OADES' deposition read. Is a ship carpenter, and repaired the Ogdensburgh after the collision. Testifies as to the damage done her by the collision.

GREEN B. MORRILL's deposition read. Is 42 years old, and has been a sailor most of the time, since he was 12 years old. Was acquainted with the Atlantic, and thinks she was too light for

lake navigation. Had a conversation with Capt. Petty, on the 20th Nov., 1852, about the collision. Capt. Petty said they saw the Ogdensburgh from 5 to 10 minutes before the collision ; said the Atlantic was running 17 miles an hour. Said they took her for a propeller, but the weather was so thick, they did not know which way she was steering. That the Atlantic was steering W. S. W., when they made the propeller's lights. She would probably swing from W. S. W., $\frac{3}{4}$ W., by having her helm a-port, half a minute, and hard a-port another minute, caused so as to head nearly North, if going 17 miles an hour. The steamer would have passed under the stern of the propeller, if the propeller was running N. E., by E., eight miles an hour, and the Atlantic S. W., by W., $\frac{3}{4}$ W., running 17 miles an hour, distant from each other three miles, with the Atlantic's lights made from two to three points over the steamer's starboard bow, if each vessel had kept her course, there would be no necessity for the propeller to port her helm. If witness had had charge of the Atlantic, should have kept his course, until he ascertained how the other vessel was coming. If her position was doubtful, and she was approaching, should have stopped his engine, and perhaps reversed it. Has avoided collisions in that way. Was on the lake the night of the collision, as mate of the steamer Niagara. There was no part of the night but a vessel's light might be seen, 3 to 4 miles off.

Capt. D. P. NICKERSON's deposition read. Resides in Ohio City, is 44 years old, has been a sailor 19 years. If he had been in charge of the Ogdensburgh, and had made the steamer's lights two and a half points on his starboard bow, he should have taken the bearings of the lights; if they did not open, should have checked her engine; and if they still neared, should have stopped, and if necessary have backed his engine, and probably have rung his large bell.

If he had charge of the Atlantic, and had made the light of the propeller one half point on his larboard bow, should have ported his wheel and checked his engine. If he saw the vessels were still coming together, should have stopped and backed.

WATSON A. Fox's deposition read. Resides in the city of Buffalo. Was one of the proprietors of the steamboat Golden Gate, and was aboard of her on her trial trip in May, 1852. Went up the lake from Buffalo to a point between Point Abino and Sturgeon Point, nearer the American than the Canada shore.

Turned to go back to Buffalo at about 10 o'clock in the evening. After they got on their course the Buffalo lighthouse was E. N. E., and they were headed on that course. He was on the pilot house and looked at the course by compass. Shortly after they came about, discovered the lights of the steamer Atlantic. When they discovered her, they made her light about half a point on her larboard bow, at the distance, he would think, of about six miles. She had colored signal lights, red on the larboard and green on the starboard bow. They had the same kind of light on the Golden Gate, which was unobstructed. Soon after he discovered the two lights of the Atlantic, he discovered the green light of the Atlantic, and the white lights on her starboard side, between decks. Then looked at their compass, and discovered the Golden Gate was still on her course. When they saw the green lights of the Atlantic, they put their helm a-port, which changed our course at least a point. In about half a minute after we ported our helm, we saw both the lights of the Atlantic, and then we immediately saw only her red light. Our helm was then steady. At this time they were as near as he could judge about two miles apart. The next thing we discovered both the lights of the Atlantic, and then the green light again; up to this time we continued our course. As soon as we discovered her green light, we stopped our engine, and the wheel was put hard starboard, as we discovered the Atlantic was crossing our bows. When we saw the green light the last time, it was about a point over our larboard bow, and about a half mile off. The Golden Gate was immediately backed, and was backing when the Atlantic crossed her bows. She passed within three feet of our starboard bow; and a man, standing on our upper deck, put his hand on her railing abaft the wheel house. As she passed he noticed that her wheel was hard a-starboard. Capt. Petty commanded the Atlantic, and was aboard at the time. As she got abreast, thinks her wheel stopped.

WILLIAM A. COAFFEE called and sworn. Recollects the time of the collision. Was then mate of the schooner Oneida. The night of the 18th of May, 1852, the night before the collision of the steamer and propeller, he was running up the lake by the wind. Met the steamer Atlantic coming down. Had his larboard tacks aboard. Made the steamer on his larboard bow. The Oneida was steering about west, with the wind S. W.

Supposed she would go past his stern, and kept his course. The man at the helm called out, "She has changed her course." Looked and saw but one of her lights. Put his helm hard up, and let go the main sheet. The steamer came with her starboard side to him, caught his jib-boom just aft her wheel, and broke it off. A man from her deck called out, "Take care of your vessel;" and they went on their course down the lake.

Cross-examined. Has been a seaman 13 years. Sailed first from Bristol, England. Made nine trips to the West Indies. Went on the Great Western steamship. Next went to the West Indies on the bark Cosmo, went to Jamaica; from thence to Baltimore, then to New Orleans, to Vera Cruz, then to Philadelphia, then to Liverpool in the ship Java, then came on to the lakes. Was going from Tonawanda to Cleveland when he met the Atlantic. Was between Long Point and Grand River.

JAMES WILLIAMS, called and sworn. Resides in Brooklyn, Cuyahoga Co. Ohio. Was on the Oneida. Made the steamer on our larboard bow. Oneida was steering nearly due west, with the wind from the south-west. The steamer was heading across our stern. He first saw she had changed her course. Saw her white lights before she turned, after that both her red and green lights. The mate ordered the helm "hard up." The captain came on deck and let go the main sheet. She might have been four lengths off when we let go our sheets. She caught our jib-boom on her starboard quarter, and carried it away. A man from her deck called out, "Take care of your vessel." Heard of the collision between the Atlantic and Ogdensburgh when we got to Cleveland. Saw her name as she passed.

Cross-examined. Were carrying a white light on our jib-boom. She was three or four miles off when we first saw her. Was about a quarter of a mile off when she changed her course.

GEORGE FISHER's deposition read. Is 53 years old; resides in Newfane, Vermont. Was on the steamboat at the time of the collision. Heard the noise made by the collision; laid awhile and finding the confusion and noise did not subside, he got up, and dressed himself, and went on to the hurricane deck. Thinks it was from fifteen to twenty minutes from the collision to the time he got on deck. When he got there, the steamer was moving slowly; could see the ripple of the water as he looked over the side. When he came out of his stateroom, there were

no lights burning in the cabin. Saw none of the officers of the steamer about. Heard no orders given; was taken from the wreck by the propeller. He judged the steamer was going in a westerly direction, because he saw the light of the breaking day over her stern. Got up when the bell began to ring. None of the officers or crew rendered any assistance to the passengers. The night was smoky. The propeller managed admirably in saving the passengers. After they were on the propeller he heard one of the passengers ask the mate of the Atlantic, what was the cause of the collision, and the mate replied, "Well, it is just one of those kind of accidents that will happen when hands get broke of their rest, and get dreaming or drowsy." This man was called the mate, and was said to be the one on watch at the time of the collision. Saw Capt. Petty when they came alongside the Sultana; saw no appearance of his being injured, except a handkerchief around his head.

LEMAN SMITH's deposition read. Is 30 years of age, and resides in Sackets Harbor, New York. Was on board the steamer Atlantic at the time of the collision. Went on board at Buffalo, went to his berth about half-past 12 o'clock; a good part of the time before retiring to his berth, he was on the hurricane deck. Was there immediately previous to retiring. He stood near the pilot house; the officer of the deck asked him whether he had taken a deck or cabin passage. Told him he had taken a cabin passage, but was not sleepy, did not want to go to bed. This was about 12 o'clock. A short time after this, he heard the second mate say to the man at the wheel, "He did not feel very well, and there was nothing in sight; he would go and turn in." He left the wheel house, and went aft, and witness saw nothing more of him while he remained on deck. When the collision occurred, he left his berth and went upon the hurricane deck. The engine was working, and continued running about twenty minutes. Heard no orders given by any one. He thinks he should have heard them if any had been given. Saw both the captain and the mate when he arrived on deck; they appeared to be in their night clothes. The steamer was under good headway when he went on deck, and continued running twenty or thirty minutes. Shortly after the collision, they lowered the large boat, which was swamped, and then they launched the life-boat, in which Capt. Petty, with the first mate

and a few others escaped from the Atlantic. The reason why he observed this particularly, was, he thought the passengers ought to have a chance, as well as the crew. The steamer was still in motion when the captain escaped from her. He remained upon the wreck until taken off by the propeller.

The officers and crew of the propeller rendered every assistance in their power, to the passengers.

VINCENT H. BURCH's deposition read. Is thirty-three years of age; resides in Oswego, New York. Is by occupation a boatman. Was on the steamer Atlantic, at the time of the collision. Went on board at Buffalo. Thinks the steamer got under way about ten o'clock. He occupied a stateroom near the bow, on the starboard side, with Capt. B. C. Turner, and another man whom he did not know. Was awakened by the crash, and got up immediately. Had on his pantaloons, and without dressing farther, went into the saloon. Went abaft the wheel, and saw no one stirring, except two porters, who were blacking boots. Then went back to his room, put on his coat, and went in search of something with which to save himself. About this time, the lights in the cabin were extinguished. Heard a jingling and rattling, as if the lamps were thrown down, and the glass broken. Heard no orders given by any one. About twenty minutes after the collision, Capt. Turner and himself jumped overboard, taking a table with them. The steamer was still moving along considerably fast, at the time they jumped overboard. Observed as his feet hung over into the water, she moved enough to carry his feet back towards her stern. Discovered one of the Atlantic's boats, and swam to it. One of the men threatened to beat Turner's brains out, if he did not let go. They bailed out this boat, and was furnished with an oar by one of the propeller's boats, and got on board the propeller. Could see the propeller's lights two or three miles off, when coming to their relief. Before he left the Atlantic, some of the passengers attempted to climb on the hurricane deck, and were pushed back by a man who stood there with a stick in his hands, which he took to be a windlass bar. Saw no effort of any of the officers or crew of the Atlantic, to save the passengers, and in one instance, they declined to pick up a passenger, who was in the water calling for help; at the same time, they took up one of the crew. This occurred after we got into the small boat. The hands of the Atlantic retained

the control of the boat. The officers and crew of the propeller, in his opinion, did all in their power to save the passengers. The atmosphere was a little smoky that night.

Capt. HIRAM SPRAGUE's deposition read. Is 43 years of age. Has been a sailor. Has commanded sail vessels and steam vessels 20 years. A steamboat can be handled much easier than a propeller. If the propeller when running N. E., by E., eight miles an hour, made the steamer's light, coming from Buffalo, from 2 to $2\frac{1}{2}$ points off her starboard bow, distant about three miles, she should have kept her course. He would not have slackened her speed until he found the light was rapidly nearing him, then he would have stopped and backed.

The course of the Atlantic being S. W., by W. $\frac{3}{4}$ W., if each vessel had kept their course, there would have been no collision. A propeller must be slowed before she is stopped, otherwise, stopping throws her head off her course. Cannot be stopped and backed as readily as a steamer. Should think it the duty of both vessels, to stop after a collision.

Capt. HENRY VAN ALLEN. Is 46 years old, resides in the city of Buffalo. In 1852, was sailing the steamer Empire State. Has been engaged in sailing steamers, since 1833. The usual course of steamers running from Buffalo to Detroit, is S. W., by W., $\frac{1}{2}$ W. This course will bring them within two miles of Long Point light. When steamers are coming near each other, with the appearance of a collision, it is the duty of their officers to stop their engine and back the steamer. We ascertain how we are approaching a light, by continuing steady on our course. If in running up to Detroit, he should discover a light, from one to two points on his starboard bow, at the distance of three miles, he should keep his course. If on the larboard bow, would not change his course, until he came near enough to see that there was danger of a collision. Thinks a steamer running between 16 and 17 miles an hour, could be stopped in three times her length. Thinks the Atlantic could be stopped in that distance. It would not be good seamanship, under the circumstances above stated, to change one's course, and run across the bows of another vessel. A vessel sailing opposite to one's course, two points over his starboard bow, at the distance of three miles, would pass at a mile's distance, and if seen at one point, would pass at half the distance.

Capt. JAMES MONROE, called and sworn. He commands the *Prairie State* propeller, belonging to claimants. Has been a sailor 20 years: about half the time on the lakes. If he was running from Cleveland to the Welland Canal, N. E., by E., and made the light of a steamer, two and one-half points over his starboard bow, he would keep his course, and watch the light to see if it closed. If it opened, it would show it was going to his right, and under his stern. If the light did not open, and was evidently nearing fast, he would slow his engine; and if he then discovered a red light, would stop; because she would be crossing his bows, and if necessary, would back. If he should meet a light dead ahead, would port his helm one-half point; if the vessel is a mile distant, they would pass thirty rods apart. Can go within one-fourth mile and port his helm, and then go clear if both vessels do so. If he made the steamer one-half to three-fourths of a point on his larboard bow, he would keep his course. If in this case, the propeller keeps her course, and the steamer ports her helm, there can be no collision. Would stop a boat and careen her, after a collision.

Cross-examined. Would see the red light of another vessel on his larboard bow; could pass his bow at different angles, and present her red lights. Thinks the smallest angle at which it would be seen, would be about six points. Can see the large red light of a steamer, in a clear night, $\frac{1}{2}$ to $\frac{3}{4}$ miles. He never did see it three or four miles. Can see the illumination of the steamer that distance, but not to distinguish its red light. If he made a vessel $\frac{1}{2}$ to $\frac{3}{4}$ points on his larboard bow, and ported his helm, would go clear; but would also go clear, if both vessels kept their course. The propeller would cut the steamer when swinging, even if her bows went clear; because, in swinging, the motion she had ahead, still continues laterally. Does not think a vessel could cut nine feet through a steamer's guard, and then ten feet into her hull.

Re-examined. Lower lake propellers carry two white lights at their cross-trees. Sail vessels do not.

Capt. JOHN CALDWELL sworn. Is 44 years old. Has been a mariner 30 years, a master 20 years. Now commands the propeller *Wisconsin*, owned by claimants, Chamberlin and Crawford. He carries two white lights at his cross-trees, and a signal light. If signal lights are carried without a screen, they would

both be seen, unless made three points off. Thinks a red light may be seen one-third further than a green one. Thinks a red light may be seen one and one-half miles; a green one, from three-fourths to one mile. In a thick haze, a red light could not be seen more than one-half to three-fourth miles. The cross-trees are some fifty feet high, probably. Thinks the Ogdensburgh cannot be turned round, under one-third to one-fourth of a mile. Can see Long Point light, from 10 to 12 miles in a clear night. Has been so thick sometimes, that he has not seen it at all; although he run pretty close in. If vessels are running "stem on," he should port his helm a point. If he made the steamer two and one-half points on the propeller's starboard bow, on their courses, would keep his course. If the steamer's lights neared without opening, he would check his engine and have a look at her. If then her red light suddenly became visible, he would know she was crossing his bows, and would stop and back his propeller. If the propeller was checked for five minutes, and then stopped and backed one minute, she would not have headway to exceed one or two miles an hour. If the propeller was three-fourth points on the steamer's larboard bow, and the steamer's helm was ported, it would carry her away from the propeller.

Cross-examination. If headed very near another vessel, would port his helm. If the steamer is running across the propeller's bows at 300 or 400 feet distance, would not like to port his helm; he would prefer to back. When a steamer's wheel is put a-port and she begins to swing, her previous forward motion is not lost.

Capt. HARRY WHITAKER, called and sworn. Has been a sailor on the lakes since 1824. Has sailed steamboats but not propellers. Vessels must be dead ahead to require both vessels to port their helms. Turning four spokes of the wheel will be sufficient. If they are on parallel lines and have a berth, no change should be made in their courses. Most collisions have been caused by vessels changing their courses. You may run two boats dead ahead at one another, and not injure them to the amount of one hundred dollars. Their bows are so sharp they glance off. With these vessels on the courses proven, and the propeller three-fourths of a point on the steamer's larboard bow, at the distance of one mile, there is no danger of a collision if they keep their courses. If the steamer ports her helm she would swing with one turn of

her wheel eight points, (one fourth of the compass) to the right, away from the propeller. If the propeller was two and one-half points on the steamer's starboard bow at the distance of three miles, if they both kept their courses they would not pass within a mile of each other. To cause a collision, the propeller keeping her course, the steamer must port her wheel. Each revolution of the steamer's wheel would carry her 78 feet, or thereabouts. The white lights of a steamer are usually made first. If he made a white light two and one-half points on his starboard bow, would keep his course until he got its bearings. If he found it neared him he should know it was crossing his bows, and would stop. It is the only safe way. When a collision occurs, it is the duty of both vessels to stop. He should have managed the propeller just as she was managed. Thinks if she had been a steamboat she would have backed out of the way in spite of them.

Cross examination waived.

Capt. JAMES M. LUNDY. Has commanded steamboats about twenty years, except two years in which he served as master of a sail vessel. When he makes a vessel's light ahead or nearly ahead, if she is a sail vessel he must get out of her way anyhow. If he made two white lights at the mast head, he should know it to be a lower lake propeller. If he met a steam vessel one-half to three-fourths point off his larboard bow, he would keep his course and let her pass. If he found her nearing and the light closing, he should stop his engine. As a sailor he would not find any fault with the course pursued by the propeller, as shown by the testimony. He might have stopped sooner. If the wheels are amidships, a vessel buries in going ahead. He should have stopped both vessels. He would not have given the charge of the deck to any body else in a thick night. There is no such watch as the second mate's watch. The captain has one and the first mate the other. If the second mate and the wheelsman are both new in their business, they are not proper persons to entrust a boat to.

Cross-examination. In fine weather the master may leave the deck in charge of the 2d mate, but not to undress or go to bed.

ABNER C. ELLIS, deposition read. Says that he resides in Sandwich, Canada West. That he was a passenger on the steamboat Atlantic when she sunk on the 20th of August, 1852. He was asleep in his berth when the collision took place, and was awakened by it. He jumped up and went into the cabin. The lights

were burning in the cabin when he came out of his room, and the first thing he saw was the broken portion of the boat made by the collision. Immediately thereafter he saw a man, who appeared to be one of the hands of the boat, turn down the lamps and put out all the lights in that portion of the cabin. It was so dark in consequence that he was unable to find his stateroom again. He wanted to get his clothing and watch, he having on nothing but his pantaloons. He then went up on the promenade deck. There was no officer of the boat there, and he heard no order given. He took a couple of stools and went into the lake, found they did not hold him up and swam back again and remained on the steamer until taken off by the propeller. The engine was in motion when he came out of his berth. Deponent was out of his berth sometime before he heard the alarm-bell ring.

Capt. W. T. PEASE, called and sworn. Has been on the lakes off and on, 24 years. Has commanded steamboats several years. Lower lake propellers are distinguished by two lights at the cross trees. The rule requires vessels meeting on a line to port their helms. If they are running on parallel lines it would not be prudent to cross over, but they should keep their courses. If he made a vessel's light should keep his course and find out hers. If the steamer on the course they were running, made the propeller on her larboard bow and ported her helm, there would be no collision. Thinks the Atlantic could be stopped, backed and get stern way on her in four or five times her length. Thinks the steamer could back about as fast as the propeller could run. If running on the course testified to by the officers of the propeller, the steamer must port her helm to produce a collision. Thinks the officers of the propeller did right in stopping and backing. Should have stopped after the collision. Sees nothing to censure in the course of the propeller.

Cross-examined. If he made the steamer's lights two and one-half points on his starboard bow, would not deem it necessary to stop. Thinks propeller's bows would penetrate the steamer's side when at rest even if the steamer was swinging. If she was cut nearly to the main hatch does not think there would be much hope of saving her. Might perhaps run ashore, but would stop and ascertain the damage.

Capt. RICHARDSON re-called. The paint on the Propeller's bow was marked back about three feet on the larboard side and

five on the starboard side. Her bulwarks were broken some eight feet back on the starboard side.

It was here admitted by counsel for the libellants that the Atlantic was running in connection with the Michigan Central Railroad.

The defence here closed their testimony.

REBUTTING TESTIMONY.

Capt. BRIGHAM re-called. When the steamer was struck it rolled her over some. Capt. Petty ordered her to be listed over. Witness tried to get the passengers over, but there was soon too much confusion. Does not think she was listed as much as she had rolled in the first instance.

Mr. GIVEN re-called. He left the Atlantic in a small boat, managed by Blodget. Did not tell Walbridge he left with a life preserver. Had a little boy hanging in the rigging with one foot on his shoulder; called Blodget to get him. Had no conversation with Walbridge on the boat. Did talk with him at Dunkirk, told him he got up and was going to bed again, but heard the noise. The boat was listed. She sunk listing to starboard three feet.

JAMES CARNEY re-called. Did not tell the wheelsman he would turn in. Did not say "it was one of those accidents which would happen when the hands got sleepy." Was taken off the Atlantic by Blodget. He and Blodget picked up three loads of passengers after the collision.

Mr. BLODGET re-called. He did not get on to the propeller when he first went to her, but staid in her boat and picked up three loads of passengers afterwards. Went aboard the Atlantic and into her cabin to see if there were any left. Recollects meeting the steamer Golden Gate. Saw her green light. Did not alter the course of the Atlantic until they got close together, then discovered a shade of her red light, and stopped and backed. Did not alter Atlantic's course at all. Examined the propeller's bow the morning after the collision. Thinks the marks of the collision extended back eight or ten feet. Put up the Atlantic's lantern top of the Neil House last night, and saw the red light three miles and one-half.

GEORGE DANA re-called. He did not turn down the lights. Did not give Given a life preserver. Was blacking boots in the

barber's shop at the time of the collision. After the collision got his brother to help him finish them, the passengers were rushing in so fast after them. Helped list the boat. Was picked up by Carney in the small boat after day light.

Mr. GUNNISON, called and sworn. Resides at Erie, Pa. Is an attorney. Was one of the coroner's jury empaneled at that place immediately after the collision. Mr. McNett testified there that he saw two white lights and one red light 2 or 3 miles off, and saw them all the time until the collision. He said if he had ported his wheel five minutes sooner, the collision could have been avoided. He said if the Atlantic had kept her course there would have been no collision; would have passed under the stern of the propeller. Said they slowed the propeller's engine one-half mile off, and when close together reversed it and put their helm starboard. Said they were in motion but nearly stopped.

WM. BARNES testified there, that the mate ordered the helm a-starboard two or three minutes before the collision.

Cross-examined. Thinks there were six witnesses sworn. Three of the Ogdensburgh's crew; cannot say distinctly. Relies on his notes. No one took notes but himself. Has got it down in his notes that some one said they made a *red* light at the mast-head of the steamer; thinks he has got it down that McNett said so.

Capt. ESTABROOK re-called. Thinks if the propeller was still, she could not penetrate the side of the steamer. A red light can be seen from three to five miles.

Capt. WILLOUGHBY re-called. Can see the red lights of a steamer six or eight miles. Has observed it in the Detroit river. Judges by the time of meeting after seeing one. Does not think it possible to break into the hull of the Atlantic under the circumstances sworn to by the defence, unless the propeller was moving.

Cross-examined. In a smoky night a red light will not show as far. In a dark night a captain should stand his watch with the second mate. He should insist on the officers being on deck in such a night, and not in the pilot house.

Capt. HOWE re-called. A red light can be seen from three to five miles in an ordinary night.

The testimony here closed.

THE ARGUMENT.

Mr. Lothrop opened the case, on the part of the Libellants.

He commenced his argument by alluding to the well known usages of navigation on our lakes, which have been enacted into a law by Congress. This act embodied certain rules adopted by a convention of Masters at Buffalo. These rules were the same which prevailed in the English marine.

He cited Abbott on Shipping, 236, the "Trinity House rule." He contended that the rule is that where steam-vessels are in danger of crossing each other's courses, either dead ahead or on converging lines, they must port the helm. This rule was enacted by Statute 9 and 10 Victoria, Abbott on Shipping, 237. He cited numerous authorities.

He referred to the four cases of collision recognized by the Courts of Admiralty. 1st. That arising from inevitable accident. Here the loss may rest where it falls; or it may be equally divided.

2nd. When it is the fault of both parties. Here each bears its own loss.

3d. Where it is the fault of the suffering party, who bears his own loss.

4th. Where it is the fault of the opposite party. There the loss falls wholly on him. There is a further rule that where a party has neglected any duty he can only exonerate himself by showing that such departure did not contribute to the disaster.

He said that by the testimony, the Atlantic was running by the compass S. W. by W. the true course being W. by S. $\frac{3}{4}$ S. The propeller's course from 12 miles out from Ashtabula to Gravelly Bay, N. E. by E. would intersect the Atlantic's line about 20 miles east of Long Point light. The point of collision is about 3 miles off Long Point. In making that point her course from her starting point must have been N. by E. $\frac{1}{4}$ E. crossing the course of the Atlantic at an angle of 2 points. He here referred to the testimony of the defence and claimed that there was a discrepancy as to the course of the propeller. The theory of the Libellants is that the propeller was to the south of the steamer, not having crossed the line of the Atlantic.

The converse is the theory of Respondents.

NOTE.—For this sketch of the arguments of Messrs. Lothrop, Swayne and Stanberry, the reporter is indebted to the report of the Capital City Fact, made by John S. Bryan, Esq., pending the trial.

He proceeded to comment at length on the testimony to establish this theory.

Mr. SPALDING, for the claimants, Chamberlin and Crawford, made the following points:

I. The collision was in no wise owing to any neglect, mismanagement, or wrongful act on the part of the propeller Ogdensburgh, because :

1st. She was on her proper course, N. E. by E., and the Libellants say, "she did not change her course."

2nd. She displayed two white lights at her cross trees, and the proper signal light, red and green, at the top of the pilot house.

3d. She had a good and sufficient lookout, and was in every respect, properly found, officered and managed.

4th. She made the steamer's lights three miles off, over her starboard bow, two and a half points, and was warranted in keeping her course.

5th. Finding the light closing in upon her, she slackened her speed, then stopped her engine, and finally reversed it.

II. That the collision was wholly owing to the reckless management of the steamboat, by the persons having her in charge ; and to a want of watchfulness, care and skill, on the part of those who directed her movements, because :

1st. The steamboat had no sufficient watch upon her deck, to keep a look out for other vessels.

The *Europa*, 2 *Eng. Law and Eq.* 557. *St. John vs. Paine*, 10 *Howard* 557. Steamer Northern Indiana, *Manuscript Decision of Judge Hall, Dist. Court, Northern District New York*, 1853.

2d. She was running at an unjustifiable rate of speed, (sixteen miles an hour,) considering the time, the place, and the state of the atmosphere.

The *Rose*, 2 *Robinson, jr.* 2. The *Iron Duke*, *Ibid*, 377. The *Perth*, 3 *Haggard*, 414. The *Virgil*, 2 *Robinson, jr.* 201. The *Genesee Chief*, 12 *Howard*, 443.

3d. When she finally made the lights of the propeller, as she was in close proximity, and did not know the course the latter was steering, every prudential consideration, as well as the rules of nautical science, demanded an essential reduction of her speed.

The *James Watt*, 2 *Robinson, jr.* 270. The *Birkenhead*, 3 *Robinson, jr.*, 75.

4th. She did wrong in putting her helm a-port, especially wrong in jamming it hard a-port, after she found the other vessel to be a propeller, standing to the northward and eastward. Instead of crossing her bows, she should have *given way* to the propeller.

The London Packet, 2 *Robinson, jr.* 217. The Emily, *Blatchford's C. C. Rep.* 236.

5th. When it became probable that the vessels would run foul of each other, the steamboat should have stopped her engine, and if possible, turned back her wheels.

Hawkins *vs.* Dutchess and Orange Steamboat Co., 2 *Wendell*, 452.

6th. Immediately upon the happening of the collision, it was the duty of the steamboat to stop, and ascertain the extent of injury received by either vessel.

7th. The steamboat in putting her helm a-port, in not keeping a more efficient watch, in running in a hazy atmosphere in the night season, with an excessive rate of speed, and in neglecting to "ease her engine," when in a state of uncertainty as to the position and course of another vessel; violated every dictate of prudence, and all maritime law and usage, and as a necessary consequence, is liable for all the damage sustained by the propeller.

H. STANBERRY, Esq. followed on the part of the defence.

He entered into a most searching analysis of the law and facts of the case.

The first position that he assumed was: No matter which vessel strikes the other first, the blame must be attached to the one in fault. 2d. That, in cases of mutual fault, an error is not to be considered a fault. 3d. In cases of uncertainty as to the course of a vessel, it is the duty of steamers to slacken their speed by easing their engine, until they can make out the course of the vessel. 4th. As to the proper place for a "look-out." He alluded to the speed and the freight of the Atlantic; the nature of the night; the frequented part of the lake; and the fact that only one man was on the look-out, and he only a subordinate, and standing a part of the time in the pilot house; and insisted that such a look-out was not a proper one. It was, he said, the captain's watch, and he should have been on deck; further, that the 2d mate was incompetent. 5th. It is not always proper in vessels meeting, to put the helm a-port. Vessels dead ahead, or nearly so, must port.

He read numerous authorities, English and American, in support of these principles.

The issues made by the pleadings are: 1st, They allege that the Atlantic was on her proper course. 2d, That she was well manned and appointed. 3d, So soon as they made the propeller's course they ported her helm. 4th, They charge that the propeller did not change her course. 5th, That she had not proper lights. 6th, That the propeller made the Atlantic's lights two miles off. 7th, That the propeller did not stop her engine or check her speed. 8th, That she did not port her wheel. 9th, That the collision was occasioned by the fault of the propeller.

He then referred to the testimony to controvert the charges against the propeller.

He admitted that she did not change her course, and argued that she acted properly in not doing so. Maintained that she had proper signal lights.

He contended that the Atlantic was not on her course. She lies, by the evidence, three and a half miles out from Long Point light house. She must have been farther out at the collision, because she ported her helm and ran towards the land sometime before and after the collision. If we were on our course we ought to have made her over our starboard bow. He took the position that the officers of the Atlantic did not consult the compass to make the bearing of the propeller, until she had ported her helm and was swinging to the right; in that case they would see her over her larboard bow; the fact of the light opening as it would have done had she been to the northward, is conclusive; again the Atlantic was not seen from the larboard side of the propeller, but she was seen from her starboard side, as is testified by the fireman, mate and engineer.

It must be so, for by the testimony of all the experts, if the steamer on her course S. W. by W., made the propeller on her course N. E. by E. three-fourths of a point over her larboard bow and had ported her helm, she must have been carried far off to the right, clear of the propeller. But if the vessels had been on the same course before referred to, and the steamer had made the propeller two and one-half points over her starboard bow by porting and hard-a-porting her helm, she must run into the propeller, and in no other way. He here entered into an extended comment on the conduct of the officers of the respective vessels.

The conduct of our mate is approved by all the experts. Wheelsman, mate and engineer were all at their posts doing their duty. On the Atlantic they did not make our lights in time. Next they mistook us for a sail vessel. They do not know our course. They first port then hard a-port. They don't check her speed. It is the opinion of all the experts that she should have checked her speed, at least after the collision. It was not done. He dwelt upon the requisite qualities of a captain in command, and other officers, and criticised the conduct of Capt. Petty and the other officers. No alarm was given to the passengers, no encouragement, all on the deck launching the boats, the lights were put out in the cabin, an officer standing at the gangway with a handspike driving the passengers down to prevent their coming on deck. Blodget and Capt. Petty left the boat when 80 feet of her hurricane deck was out of water; instead of remaining and providing for the safety of his passengers. The propeller goes to the relief of the Atlantic's passengers, sends out her boat to pick up drowning passengers, and takes off those on her deck. After some allusion to alleged discrepancies in the testimony of the defence, and some general remarks, he brought his argument to a close.

N. H. SWAYNE, Esq., closed the argument for the libellants.

He commenced his argument in favor of the position assumed by Mr. Lothrop, that it is a principle well established in Admiralty jurisprudence, that in cases of collision when there is fault attributable to both parties, there must be an equal apportionment of damages between them without regard to the value of the respective craft.

He next assumed that in all cases of steamers meeting each other, it was their duty to port their helms mutually. Alleged that all the cases referred to by the respondents as exceptions to the general rule, were those in which steamers met sailing vessels. Quoted from Abbot on shipping, the rule that in cases where steamers met each other either stem on, *i. e.*, dead ahead, or on converging lines, they must port their helms and pass to the right.

He read some authorities to support this position, and referred the court to others.

There *may* be exceptions to this proposition, but where such a deviation occurs, the party making it must show that such devia-

tion was not the cause of the catastrophe, and they were not in fault. Controverted the position assumed by the respondents, that the steamer was the more flexible in its movements—could change its position with more facility than the propeller. Claimed that the steamer, making the propeller over her larboard bow, acted right in porting, and that it was the duty of the propeller to do likewise, which she neglected.

He then entered into a lengthy discussion of the facts in the case as disclosed in the evidence. The steamer was cut through nearly to the main hatch, assumed that no human means could have saved her, that it was the duty of her officers to run her to shore, in the opinion of the experts. Proceeded to exonerate the Atlantic from all blame, her speed was not unusual, the distance from Buffalo to Long Point was assumed as 70 miles, assuming that she left at 10 o'clock that would give her 14 miles per hour. It does not appear that there was a necessity to check the speed of vessels at that point. The cases quoted apply to the Thames and the narrow waters of Great Britain. Controverted the position assumed that the pilot house is not the proper place for a "look-out." In the case cited the wheel-house was in the middle of the boat, here it was in the front part on the promenade deck. Our wheelsman was a competent man. The 2d mate was also competent. It is usual in the navigation of the lake to entrust the 2d mate with the charge of the boat. Wheelsman made the light of the propeller before he ported the helm, the light opened on the steamer as well as on the propeller. The propeller starboarded her helm. The bell was rung, the vessel careened. We were right.

It is admitted by all the experts that if it were probable that under the circumstances the Atlantic might have been saved by running her to shore even if it were possible, that stopping might have been a better course, it was an error and not a fault in our officers. We were on our proper course. They were not on their proper course, for a line run from ten miles out from Ashtabula to Gravelly Bay, would intersect our line some 12 or 15 miles East of Long Point. McNett testifies in his deposition that when he came on watch he found her standing E. N. E.; about two o'clock he ordered her course to be changed to N. E. by E., when on the stand he denied that her course had been changed.

Barnes, the wheelsman, swears that he gave him the order to change her course, and he did so.

He commented at length upon the discrepancy between the statements of the officers of the propeller before the coroner's jury at Erie, immediately after the catastrophe, and their evidence here on the stand.

They say they made our light over their starboard bow two and one-half points; they say our light opened upon them; porting the helm opened that light to them and to us. There is no evidence of letting off steam except by the engineer; it must have been slight, the slowing the boat must have been slight, they must have been making some five miles per hour; the lights opening on both sides, they should port; they must have starboarded the helm according to the evidence given at Erie. (The opposing counsel objected that that supposition would change the course of the propeller, whereas the allegation of the libel was that she did not do so.)

He rejoined that in Admiralty practice they were not bound by those allegations, but might prove their case as it was, and accommodate their libel to the proof. He entered into an examination of the different hypotheses advanced as to the manner in which the collision was brought about, and claimed that the facts were at war with those of the respondents and supported that of the libellants. We claim that

They should have ported—they starboarded.

They should have stopped their engine when they slowed it.

They did not ring their alarm bell in season.

After some general remarks, the gentleman brought his argument to a close.

He remarked that if the court were of opinion that there was a mis-joinder, they would amend by proceeding against the owners alone.

OPINION OF THE COURT.

BY HIS HONOR, JUDGE LEAVITT.

The libellants aver substantially, that said steamboat being of eight hundred tons burthen, with passengers and freight on board, left Buffalo in the evening of the 19th of August, 1852, for Detroit, and proceeding on her voyage across the lake, by the usual and direct route, with all her signal lights burning and in good

condition, about half-past two o'clock, in the morning of the 20th of August, off Long Point, on the Canada shore, was run into with great violence, by the propeller Ogdensburgh, then on her way from Cleveland to the entrance of the Welland Canal; the said steamboat being struck on her larboard side, near the forward gangway, and the guard and hull being so broken, that she filled with water, sunk, and was a total loss to the libellants. It is also averred, that at the time of said collision, the Ogdensburgh did not have lights burning and properly displayed, as required by law; and was not then steering on the usual and proper route from Cleveland to the Welland Canal; and, that on the approach of the Atlantic, though clearly visible for at least two miles, the propeller did not stop her engine, lessen her speed, alter her course, or take any other precaution to avoid a collision. It is also alleged, that the officers and crew of said steamboat, as the propeller approached, first put the helm *a-port*, and then hard *a-port*, to get out of the course of the propeller, and used every effort to prevent a collision, but that the propeller, though seeing the lights of the Atlantic at a great distance, did not port her helm, or slacken her speed, or display lawful signal lights, but was so unskillfully and improperly managed, that she was run nearly at right angles, into and against the Atlantic; and, that the collision resulted from the carelessness, negligence, and unskillfulness of the officers and crew of said propeller; and that the libellants have sustained damage thereby, to the amount of one hundred thousand dollars.

The answer of Chamberlin and Crawford, the claimants of the Ogdensburgh, which they aver to be a propeller of 353 tons burthen, sets up in substance, that she left Cleveland with a heavy freight, about twenty minutes after 12 o'clock, in the afternoon of the 19th of August, 1852, and proceeded by way of Fairport, towards Ogdensburgh, N. Y., the place of her destination, which was to be reached by means of the Welland Canal, in Canada; that about 2 o'clock the next morning, steering her proper course, N. E. by E., for the entrance of said canal, the wind being light from S. W., and the weather somewhat hazy, her watch on deck discovered a steamboat light, from two to three points off her starboard bow, at the supposed distance of three miles; that keeping on her course at a speed of about seven miles an hour, her mate ascertained that the light was fast nearing her, and gave the

signal to "*slow*" the engine; which was done, and the light still coming nearer, an order was given to *stop*; that finding the boats were in danger of collision, the engine of the propeller was reversed, and she was *backed*; that these orders were given with all possible dispatch, but in spite of all these precautions a collision ensued.

The answer then avers, that by reason of the *Atlantic's* turning from her proper course, and continuing with unabated speed, 15 miles an hour, in a direction across the bow of the propeller, she fell with all her momentum, upon the propeller's stem, wrenching it out of place, and carrying her half round. It is charged, that the collision was wholly caused, by the unparalleled recklessness of the persons in command of the *Atlantic*; and that those navigating the propeller, managed her according to the approved rules of lake navigation, and with a due regard to the safety of both vessels. It is also averred, that the propeller had all her lights burning, and displayed as required by law.

The claimants ask for a decree for the injury sustained by the propeller, as the result of the collision, and by the agreement of the parties, such decree is to be rendered in this case, if in the judgment of the Court, the claimants are entitled to compensation.

It is also further agreed, that the value of the *Atlantic* was seventy thousand dollars, and is to be so considered by the Court, if it shall be adjudged that the libellants are entitled to a decree in their favor.

The matters in controversy in this case are indicated by the foregoing summary statement of the libel and answer.

A great mass of testimony, partly oral and partly in the form of depositions, has been exhibited to the Court, in support of the opposite claims of the parties, and as usual in investigations growing out of marine collisions, there is, in some material points, great conflict in the testimony. Without noticing the large portions of the evidence, which have no direct bearing on the points in dispute, I shall refer to that only, which forms the basis of the conclusions to which I have been led.

But before noticing the facts, it will be proper to state some of the settled doctrines of the maritime law, as to collisions. Lord Stowell, justly distinguished for his eminent ability as an Admi-

rally Judge, classifies the cases in which collision may occur, as follows :

“ In the first place a collision may happen, without blame being imputable to either party, as where the loss is occasioned by a storm, or other *vis major*. In that case the misfortune must be borne by the party on whom it happens to light ; the other not being responsible to him in any degree.

Secondly—A misfortune of this kind may arise where both parties are to blame, where there has been want of due diligence or skill on both sides. In such case, the rule of law is, that the loss must be apportioned between them, as having been occasioned by the fault of both of them. Thirdly—It may happen by the conduct of the suffering party only ; and then the rule is, that the sufferer must bear his own burthen. Lastly—It may have been the fault of the ship which ran the other down, and in this case, the innocent party would be entitled to an entire compensation from the other.” 2 *Dods. Ad. R.* 83, *Abbott on Shipping*, 230, *Marg. p.*

It is clear, from the general phase of the present case, that it does not fall within the first classification. The disastrous collision under consideration, did not happen through an agency, beyond human control. There is a fault resting somewhere ; a wrong doer, chargeable with want of skill, or inattention to duty. The libellants insist, that they are losers of their valuable steamboat and her appendages, by reason of the mismanagement of the Ogdensburgh. The respondents, on the other hand, insist, not only that they are not liable for the loss of the Atlantic, but that they are entitled to compensation for the injury sustained by them, as the result of the collision.

To make good their claim to indemnity, the libellants must show, that the collision was caused by the fault of the other party, and that no censure attaches to those charged with the management and navigation of their boat. And, if the respondents would show a just ground of claim for remuneration for their loss, it must appear that they are without fault. I think there is no foundation for urging, that the present is a case of mutual culpability, calling for an apportionment of the loss between both parties.

The maritime law is rigid in its exactions of unremitting care and vigilance, on the part of those entrusted with the navigation

and safe keeping of vessels of every kind, to avoid accidents and injuries by collision. Any negligence, inattention, or want of skill, resulting in injury to others, will entitle the sufferer to remuneration.

These are general and admitted principles, touching the rights and liabilities of parties, in cases of collision. It is now proper to inquire what is the result of their application to the facts of this case.

The facts as exhibited in the evidence of the opposing parties, are in some essential particulars, widely variant. On the part of the libellants, the material facts proved, may be summarily stated as follows :

The steamboat *Atlantic*, the property of the libellants, being a first class passenger boat on Lake Erie, of the tonage before stated, and with an engine of a thousand horse power, navigated and managed with the usual complement of officers and hands, having on board, including passengers and crew, between five and six hundred persons, and furnished with the lamps and lights required by law, and the usages of lake navigation, left the port of Buffalo about, or a few minutes after 9 o'clock in the evening of the 19th of August last, on her regular trip to Detroit. It seems according to the usual course of navigation by steamers, between the places named, that Point au Pelee, putting out from the Canada shore, near the upper end of the lake, is the terminus of a direct line usually pursued ; the course from Buffalo to that point, bearing S. W. by W. This line of navigation runs within a short distance of Long Point, on the eastern extremity of which there is a light house. This is sixty-eight or seventy miles distant from Buffalo. On the night in question, the *Atlantic* pursued the usual course of steamers, and came abreast of Long Point light house, about two o'clock. It was a star-light night, but a haze or smoke hung over the lake, extending upward from twenty-five to thirty feet, which rendered it difficult to discover objects involved in it, at any considerable distance. The second mate of the boat was on watch, from the time of leaving Buffalo, till the collision.

It was the starboard watch, as it is called by mariners, and belonged properly to the master, who, on this occasion, does not seem to have been on deck during the entire watch. The 2d mate and wheelsman were joined on deck, at 12 o'clock, by a

passenger who had some experience as a navigator on the lake. According to the testimony of the three persons, after the Atlantic had proceeded about one mile beyond Long Point light, a little after two o'clock, they made a light—two white lights—which the mate took for the lights of a sailing vessel, heading southward. These witnesses agree in the statement that the steamer holding on her course S. W. by. W., made the lights seen, from a half to three quarters of a point over her larboard bow, indicating that the position of the approaching craft was a little south of the line of the steamer's course. The lights, when first seen, in the opinion of one of the witnesses, were about one mile distant. The steamer kept her course, under a full head of steam, at the rate of not less than 15 miles an hour, when it was ascertained distinctly that the lights seen belonged to a propeller steering for Gravelly Bay, through which the entrance into the Welland Canal is reached. The steamer continued to approach without any diminution of her speed, until within three or four lengths of the boat from the propeller, when the order was given to the wheelsman to *port* his helm, which was almost immediately succeeded by the order to put the helm *hard a-port*. Very soon after the Atlantic's larboard side, just aft the forward gangway, came violently in contact with the propeller's bow, causing a breach in the steamer's side some seven feet in width, extending downward below the water line, and inward nearly to the middle hatch. Without stopping the engine, the order was given to head her to the shore, and after running between half a mile and a mile, such was the rapid inflow of water, that she sunk at a point where the lake is twenty-five fathoms deep.

Such is the case, very briefly stated, as presented by the witnesses for the libellants. On the part of the respondents, the witnesses produced are the master, wheelsman, first mate, clerk, engineer and a fireman on the Ogdensburgh. In the first place it may be remarked, that they satisfactorily disprove the allegation in the libel that the propeller was not furnished with and did not display, on the night of the collision, the red and green signal lights required by statute. The boat was provided with these lights and they were suitably displayed and lighted.

The Ogdensburgh in addition, had two white globe lights on her cross-trees, together with several lesser lights. These, it is

in proof, were all lighted and in good order throughout the night on which the collision occurred.

It appears that starting out across the lake from a point a few miles off Ashtabula, on the southern shore, the propeller was put upon her proper course, N. E. by E., for the entrance of the Welland Canal; and that although there had been previously a slight variation from it, she was on it when the lights of the steamer were made, and continued upon it till the collision happened; that the lights of the Atlantic were first made by the propeller two and a half points over her starboard bow, and at the estimated distance of two and a half or three miles; that the mate having first taken the bearings of the light by compass, and seeing that the light opened a few points on the starboard, hand ordered the wheelsman to keep on his course, and immediately thereafter, being uncertain as to the bearings of the steamer's lights, gave the order to *slow* the engine; that after watching the light closely for a short time, the mate saw the red signal light of the steamer and ascertaining that she was within four or five times her length of the propeller, rung the bell to *stop* and *back* almost simultaneously; that before the order to *slow*, the propeller was running at the rate of eight miles an hour; that after the order to *slow*, and when the orders to *stop* and *back* were given, her speed had been reduced to about three miles an hour; that all the orders referred to had been promptly obeyed, and the propeller brought almost if not wholly to a stand; that the Atlantic without either slowing or stopping, continued her course towards the propeller, heading, as the nautical phrase is, "*stem on*;" that the mate seeing the collision inevitable, gave the order to starboard the helm, hoping thereby to receive only a glancing blow, but this movement produced little or no effect, as the propeller was stopped or nearly so, and of course did not obey her helm. The Atlantic thus struck the bow of the propeller, causing the breach in the steamer before noticed, and carrying away the lower part of the propeller's stem, loosing and turning the other part from its position, unfastening the end of the planks, and causing an opening through which the water found its way into the boat.

This synopsis of the testimony on both sides, as to the course and relative position of the boats, when the lights of each other were made, their subsequent conduct, and the facts relating to the collision, will suffice to show the material discrepancies be-

tween the witnesses on either side, and afford some intelligible landmarks for the Court, in settling the rights of the parties.

It will be noticed that the essential differences between the parties consist in the opposite statements of the witnesses as to the bearings of the lines, on which the steamer and the propeller neared each other. On the hypothesis of the libellants, the lights of the propeller were first seen, in seaman's phrase, nearly *dead ahead* of the Atlantic, being less than a point over her larboard bow. Thus meeting, if the Atlantic had exercised the proper precaution of checking her speed, and porting her helm, and the propeller had failed to use the proper prudential measures, a collision being the result, the fault would be chargeable to the latter. But, on the respondents' proof, the lights of the steamer were seen two and a half points over the propeller's *starboard* bow, indicating clearly, that she was on her proper course, north of the steamer's proper line of travel; and, that by improperly *porting* and *hard porting*, the steamer had been turned too far north, and carried across the propeller's bows. This latter supposition, I am obliged, as the case is presented, to adopt. I have failed to perceive any reason, why the statements of the respondents' witnesses, as to the matters in which they are in conflict with those of the libellants, should be repudiated. They are not only more numerous, but for reasons of a higher and more decisive character, better entitled to credit.

In this view, how stands the case? The propeller has done all that reason, usage or law required. The many experienced and highly intelligent navigators, who have testified as experts, have declared as with one voice, that every precautionary measure adopted by her, was sensible and judicious. She did all in her power to avoid the collision, while she omitted nothing that could have been done. True, the order given by her mate to starboard her helm just preceding the collision, was not called for; but for the reason before stated, it produced no result, and may well be designated as "an error," without being "a fault."

In coming to this conclusion, I am not unmindful that it was strenuously insisted in the argument, that by the settled usages of navigation, as also by judicial determinations, it is the duty of vessels, whether propelled by steam or wind, when meeting "dead ahead," or nearly so, to port helm, and each turn to the

right. There can be no doubt of the existence of this rule, or of its obligatory nature; but it must be limited to cases in which it properly applies. The experts who were questioned on this subject, agree in stating, that if two boats or vessels are approaching in opposite directions, yet with berth enough to exclude the possibility of coming together, each pursuing their onward course, they are not required to port helm. Indeed, they agree in stating what is clearly obvious, that in the case supposed, the porting helms would tend rather to bring about, than avoid, collisions. These experts also say, that under the circumstances in which the *Atlantic* and the *Ogdensburgh* approached, the latter was not required to depart from her course, and that the *Atlantic* was wrong, in porting her helm and diverging from her track.

It is clear then, that the libellants have no claim to compensation from the owners of the *Ogdensburgh*, for the whole or any part of the loss sustained by them, as a result of this disastrous collision. It remains to inquire, whether a decree shall pass against the libellants for the loss suffered by respondents, in the injury to the propeller.

By agreement of parties, the question whether it is competent in a proceeding by libel, where the answer, as in this case, asserts a claim against the libellants, and prays for a decree accordingly, to treat it as a cross libel, is waived; and it is stipulated that a decree may be entered for the owners of the *Ogdensburgh*, if in the opinion of the Court, they are entitled to it, on the law and facts of the case. Their right to such a decree depends clearly on the answer to the inquiry, whether their loss is attributable to the sole fault of the libellants' steamer. That the libellants are great sufferers from the collision, and have chosen to initiate this proceeding, cannot deprive the owners of the propeller of their claim to compensation, if they are chargeable with no fault. They are to be viewed precisely as if they were the libellants, seeking indemnity for a loss; and, if they make out a good case, are entitled to a decree in their favor.

The inquiry is then presented, whether the facts and the law applicable to them, show a case of such exclusive culpability on the part of the *Atlantic* as not only to preclude her owners from any right to compensation, but to make them responsible

for the injury sustained by the Ogdensburgh. This is contended for, by the respondents' counsel, on several grounds.

1. It is insisted, that the Atlantic had no sufficient watch on deck, during the night of the collision. The night, as already noticed, was not dark, but the haze on the lake made it difficult to distinguish objects at any considerable distance. The route of the steamer, especially in the vicinity of Long Point light, was one much frequented by vessels and steamers, passing up and down the lake, and to and from points along the southern shore, by propellers and other craft, carrying on commerce with the lower lakes, through the Welland canal. The Atlantic was a steamer of great power, and of great speed; and, on the night referred to, was the freighter of between five and six hundred human beings. These facts are quite sufficient to justify the conclusion, that those entrusted with her management and navigation were called upon for the exercise of the greatest watchfulness and care. It seems, the only persons on deck, having any rightful connection with the steamer, from the time she left Buffalo till the occurrence of the terrible collision, which sent her to the bottom of the lake, and occasioned the loss of some two hundred human lives, were the second mate and the wheelsman. As before noticed, it was the captain's watch; and the testimony of the most experienced and reliable experts is, that under the circumstances of the case, it was wholly improper that the captain should have entrusted the care of the boat to the sole management of the second mate; an officer, in whom the higher qualifications of a navigator are not looked for, and who, in the language of a very intelligent expert, is viewed as the mere "drudge" or assistant of the captain. In point of fact, the second mate, even if his competency for the station is admitted, (which is, at least, doubtful,) did not keep a vigilant lookout, within the requirements of the decisions of the highest judicial tribunal of the country. He was, by his own statement, in the pilot house, at the time he made the lights of the propeller, looking from one of the windows; and did not make these lights till they were about one mile distant.

In the case of *St. John vs. Paine and others*, 10 Howard's Reports, 557, it was said by Judge Nelson, in delivering the opinion of the court, that "The steamboat was in fault in not keeping at the time, a proper lookout, on the forward part of

the deck; and that the failure to descry the schooner at a greater distance than half a mile ahead, is attributable to this neglect. The pilot house in the night, especially if dark and the view obscured by clouds in the distance, was not the proper place, whether the windows were up or down. The view of a lookout stationed there must necessarily be interrupted." And in the same case the court held, "That a competent and vigilant lookout, *stationed* at the forward part of the vessel, and in a position best adapted to descry vessels approaching, at the earliest moment, is indispensable, to exempt the steamboat from blame in case of accident in the night time, while navigating waters on which it is accustomed to meet other water craft." And again, the court said, "There is nothing harsh or unreasonable in this rule; and its strict observance and enforcement will be found as beneficial to the interests of the owner, as to the safety of navigation."

In the case of the propeller *Genesee Chief* vs. Fitzhugh and others, 12 Howard's Rep. 443, in giving the opinion of the court, Chief Justice Taney says, "It is the duty of every steamboat traversing waters where sailing vessels are often met with, to have a trustworthy and constant lookout, besides the helmsman. It is impossible for him to steer the vessel, and keep the proper watch in his wheel house. His position is unfavorable to it, and he cannot safely leave the wheel to give notice when it becomes necessary to check suddenly the speed of the boat. And whenever a collision happens with a sailing vessel, and it appears that there was no other lookout than the helmsman, *or that such lookout was not stationed in a proper place, or not actively and vigilantly employed in his duty, it must be regarded as prima facie evidence that it was occasioned by her fault.*"

In a recent case in Admiralty against the steamboat *Northern Indiana*, a passenger boat on Lake Erie, decided by Judge Hall, of the District Court of the United States for the Northern District of New York, it was held, that the mate alone, while the officer of the deck, though in all respects competent to the duty, did not constitute a sufficient lookout, within the requirement of the decisions of the Supreme Court of the United States, referred to. The judge remarks that, "The mate was the officer of the deck, holding the temporary command of the vessel, and liable to be continually called to the discharge of duties incon-

sistent with the keeping of a constant and vigilant watch, and ought not to have been relied on for that purpose."

In England, the rules prescribed by the courts in regard to lookouts, are more stringent than in the United States. A case is reported in the 2d vol. Eng. Law and Equity R. 557, in which the *Europa*, one of the Atlantic steamers, was condemned for an injury to a sailing vessel, occurring during a thick fog, on the route of steam travel between the United States and England, on the ground of the insufficiency of her lookout; when the proof was, that there was an officer stationed on the bridge, a quarter master on the top-gallant fore-castle, another quarter master at the con, besides the one at the wheel.

I cannot hesitate to say, in view of these authorities, that the *Atlantic* did not maintain a sufficient lookout, on the night of the collision.

2. In the next place it is urged, that the steamer was guilty of a great error in porting, and then hard-porting her helm, thereby running across the bows of the propeller, so as to make the collision an almost certain result. It has been before stated, that in the relative position and courses of the two vessels, at the time the lights of each were made by the other, there was no obligation on the propeller, to port her helm. From the width of the berth between the two boats, if each had kept its course, there could by no possibility have been a collision. They would have passed at a distance, probably not less than a mile apart. The law, therefore, requiring vessels and boats, approaching on the same or nearly the same line, to port their helms, as already remarked, does not apply. And it was palpably wrong in the steamer, and necessarily attended with danger, to port her helm, and diverge from her course, especially without checking her speed. The movement indicated great want of skill and judgment in navigation. The steamer should have *given way*, as the nautical phrase is, and have passed under the stern of the propeller. (2 Robinson, Jr., p. 5.)

3: But another fault, very much insisted on by the advocates for the respondents, was the omission of the mate to check the speed of the *Atlantic*. There is no pretence, that any order to that effect was given, or that in fact, the velocity of the boat was at any time checked. This gross dereliction of duty, if the mate of the *Atlantic* was chargeable with no other, would, un-

der the circumstances of this case, make the boat responsible for all the consequences which followed. It is entirely without excuse or palliation. It is proved that the boat at the time of making the propeller's lights was going forward under high steam pressure, and her rate of travel was not less than fifteen miles an hour. Her mate says, that from the haze on the lake he did not see the propeller's lights till within about a mile of her; and concluded, when first seen, they were on a sailing vessel going south. Yet, notwithstanding the difficulty of vision, and the uncertainty that existed as to the character of the craft, and the direction of her course—her lights, seen as he says, less than one point over the steamer's larboard bow—he pressed on with criminal recklessness, and without the least reduction of her dangerous speed. The numerous experts who have testified in this case, as well those called for the libellants, as for the respondents, agree in saying, it was the obvious duty of the *Atlantic's* mate when the propeller's lights were first made, if, after noticing their bearing, there was the least uncertainty as to their position or motion, instantly to check the speed of the steamer, and then, if necessary, to *stop*, and *back*. They agree also, in saying, if this course had been pursued, there was not a possibility that a collision could have happened. The propeller, pursuing her course N. E. by E., would have passed beyond the reach of the steamer, and the frightful calamity that took place, would have been avoided. And it is amazing that a course so plain and safe, had not suggested itself to the mate. That instead of this, he should have crowded the helm hard *a-port*, and with unchecked velocity, turned the steamer almost across the path of the propeller, imports a recklessness and stupidity, that argue badly for his fitness for the truly responsible position he occupied. In this connection, it is not unworthy of notice, as showing what the libellants supposed it necessary to prove, to place themselves *rectus in curia*, that they have averred in their libel, that the course above indicated as the proper one, was precisely that which was followed by the mate of the *Atlantic*.

It is not deemed necessary to notice specially the judicial decisions, both in England and in this country, enforcing rigidly, the obligations and duties of those connected with steam navigation. Many of these were presented, and ably commented

upon, by the advocates of the respondents in the argument of this case. In addition to those noticed in the previous part of this opinion, many others were adduced, of pertinent application to this subject. Among them the following are noted: 2 Eng. Law and Eq. R., 557; 12 Howard's R., 443; 2 Robinson, Jr. R., 2; 2 Robinson, Jr., 201, *ibid* 270; 3 Robinson, Jr., 75; 2 Hag., 356; Davies' Rep., (Maine,) 197; Wharton's Dig., 1852, Sup. 388.

The general tendency of these authorities is to enforce the duty of great caution, and unremitting vigilance, on the part of those engaged in the navigation of vessels propelled by steam. The obligation of lessening the speed of steamboats, under all circumstances, where unchecked velocity may be supposed to be dangerous, is especially enjoined. And there can be no question, that the preservation of human life, as well as of property, demands at this day, when there is such a disposition to sacrifice every thing to rapidity of movement, that owners and managers of steamboats should be held to a most rigid accountability.

I cannot well conceive of a case, calling more urgently for the application of these principles, than the one under consideration. The calamity which has befallen the ill-fated Atlantic, putting in the most imminent peril, the lives of upwards of five hundred persons, and attended with the actual loss of more than two hundred, has resulted from an insane neglect of duty in not checking her rapid speed at the proper time, and a desire to make headway at all hazards. And it is certainly a somewhat singular feature of this case, that her owners, responsible morally and legally, for the misconduct and incompetency of the officers and agents, whom they had placed in charge of their boat, should ask remuneration for a loss, arising clearly from their recklessness, or unskillfulness. As to the master of the Atlantic, some conclusion may be drawn in relation to his professional character and qualifications from the fact, that although it was his watch, it does not appear that he was on deck, from the time the boat left Buffalo, till he was roused from his slumbers, by the fatal collision; and afterwards was distinguished for his "masterly inactivity" in every thing but the carrying out of measures to save his own life. The second mate, who was invested with the sole management and command of the boat, and

to whom was committed the safe keeping of more than five hundred persons, was not qualified for his trust, as is apparent from the facts already noticed. In a word, it is impossible to review the incidents of that sad catastrophe, without a painful impression, that those occupying official stations on the Atlantic were grossly deficient, not only in professional skill and intelligence, but in the higher moral qualities of trustworthy navigators.

It would be well if the page which records the incidents of that night of disaster, especially those occurring after the collision, and while the lives of so many were suspended by a thread, over a watery grave, had never seen the light.

It reveals a picture of selfishness and inhumanity, the contemplation of which is by no means pleasant, and upon the details of which, it is not necessary to dwell.

Under the belief that the foregoing views sufficiently indicate the grounds on which it is designed to place the decision of this case, I forbear to notice some other points made in the arguments. In my judgment, the libellants on the law and the facts are not entitled to a decree, either for the whole, or any part of the value of the steamer Atlantic; and the respondents have a just claim to compensation for the injury sustained by the Ogdensburgh arising from the faulty management of the Atlantic. The amount of this injury, by agreement of parties, is three thousand dollars; for which sum, I decree against the libellants, with costs.

In connection with this case, a preliminary question of Admiralty practice is presented by the first article of the respondents' answer, as matter exceptive to the libel, which is stated as follows:

"That the libellants have improperly joined a proceeding *in rem* against the propeller Ogdensburgh, with a proceeding *in personam* against the respondents as her owners."

This point was argued fully before the hearing; and reserved for further consideration. Its decision now is no way material to these parties, as the Court has decreed in favor of the respondents, on the merits. It may be desirable, however, that the views of the Court on the point raised should be known, that the practice hereafter may conform to them.

After an examination of the authorities cited, in connection

with Rule 15, of the rules adopted by the Supreme Court of the United States, for the practice of the Admiralty Courts of the Union, I am satisfied that the joinder in the same libel of a proceeding *in rem*, against a ship, and *in personam*, against the owner, in an action for damage by collision, is not admissible. In one case, before Judge Story, prior to the adoption of the rules of the Supreme Court, he expressed himself strongly against the propriety of such a joinder.

The case referred to is the *Citizens' Bank vs. the Nantucket Steamboat Company*; 2 Story's R., 57. In the opinion delivered by Judge Story in that case, he remarks: "In the course of the argument it has been intimated that in libels of this sort, the proceeding might be properly instituted, both *in rem* against the steamboat, and *in personam* against the owner and master thereof. I ventured at that time to say, that I knew of no principle or authority, in the general jurisprudence of courts of Admiralty, which would justify such joinder of proceedings, so very different in their nature, and character, and decretal effect. On the contrary, in this court, every proceeding of this sort has been constantly discountenanced, as irregular and improper." Again, the judge says: "In cases of collision the injured party may proceed *in rem* or *in personam*, or successively in each way, until he has full satisfaction. But, I do not understand how the proceedings can be blended in libel."

The case referred to was before Judge Story in 1841. At the January term, 1845, the Supreme Court, in pursuance of express authority conferred by an act of Congress, prescribed the rules of Admiralty practice. Rule 15 is as follows: "In all suits for damages by collision, the libellants may proceed against the ship and master, or against the ship, or against the owner alone, or the master alone, *in personam*."

There seems to be no room for doubt as to the true construction of this rule. It is understood these Admiralty rules were drafted by Judge Story; and the rule above quoted, was designed to carry out his views of the correct practice, as very clearly stated in the foregoing extract from his opinion. The rule provides specifically how a party may be proceeded against for an injury by collision. It may be—1. Against the ship and master. 2. Against the ship. 3. Against the owner alone. 4. Against the master alone, *in personam*. Clearly a proceeding

in rem against the ship, and *in personam* against the owner, not being authorized by this rule, is prohibited.

The rule quoted was thus understood and construed by the late Judge Woodbury. In 2 Woodbury and Minot's Rep., 92, in delivering the opinion of the court, he says: "The other objection is the misjoinder of the vessel and owners, in the same libel. This involves a proceeding *in personam* and *in rem*, in the same case, and contravenes the settled rules of Admiralty proceedings." He refers to Rule 15, before cited, and also the 17th Rule, as sustaining his views.

Judge Conkling, in his work on Admiralty, vol. 2, 380, et. seq., after discussing the question, whether before the adoption of the rules of the Supreme Court, a proceeding *in rem* and *in personam* could be joined, holds, that the practice, if it was before allowable, is abolished by Rule 15.

I see no reason to doubt the conclusion, that at least, in suits for collision, it was the intention of the Supreme Court to direct what proceedings were admissible; and in pointing out the course which they regarded as proper, to prohibit all others.

The exception to the libel is therefore sustained, and the libellants have leave to amend.

